366.

# SUPREME COURT OF THE UNITED STATES.

No. 154.

WILLIAM WYNN, PLAINTIFF IN ERROR,

*v.*

CHESLEY B. MORRIS, MARTHA MORRIS, AND KEZIAH TAYLOR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ARKANSAS.

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### PROCEEDINGS IN SUPREME COURT.


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State of Arkansas. In the Supreme Court, *ss.*

Be it remembered, that at a Supreme Court of the State of Arkansas, begun and held at the court-house in the City of Little Rock, on the first Monday in July, A. D. 1855, and on Saturday, the 4th day of August of said term, before the Honorable Elbert H. English, Chief Justice, and the Honorable Christopher C. Scott and David Walker, Judges of said Court, were the following proceedings in the case of

WILLIAM WYNN, Appellant,
*v.*
CHESLEY B. MORRIS and
MARTHA MORRIS, Heirs of
WILLIAM F. MORRIS, Deceased, and
KEZIAH TAYLOR, Appellees.

Appeal from Lafayette Circuit Court in Chancery.

Be it remembered, that heretofore, to wit, on the 2d day of July, A. D. 1853, the said appellant filed, in the Office of the Clerk of said Supreme Court, the transcript of the record in said cause, which is in the following words:

State of Arkansas. County of Lafayette.

Pleas before the Honorable John Quillen, Judge of the Sixth Judicial Circuit in the State of Arkansas, composed of the Counties of Sevier, Polk, Pike, Montgomery, Clark, Ouachitta, Union, Lafayette, and Hempstead:

At a Circuit Court in Chancery, begun and held at the court-house, in and for the County of Lafayette, on Monday, the 29th day of April, A. D. 1850, being the time prescribed by law for holding said Court, present and presiding the Honorable John Quillen, Judge as aforesaid.

And afterwards, to wit: on the 2d day of May, A. D. 1850, the following proceedings were had, to wit:

WILLIAM WYNN, Complainant,
*v.*
WILLIAM F. MORRIS and
KEZIAH TAYLOR, Defendants.

This day comes the complainant, and files his bill of complaint against said defendant; which, being read, and by the Court heard and understood, and said William F. Morris being now present in Court by Hubbard & Curran, his solicitors, and offering no argu-

ment against the prayer for injunction in said bill contained, which is, that said William F. Morris be enjoined from proceeding upon, or attempting to enforce by execution or writ of possession, on a certain judgment in this Court, on the law side thereof, recovered at the present term against said William Wynn, for possession of the N. W. ¼ of Section 18, in T. 16 south of R. 25 W., and for the further sum of $1710 damages for detention of said premises; and the Court here thinking that, upon the fact of said bill, it is proper that such injunction should be granted.

It is therefore ordered and adjudged, that said William F. Morris, his agents, attorneys, and solicitors, be forbidden and peremptorily enjoined from suing out writ of execution or possession on said judgment, or in any wise attempting to enforce the same, until the further order of this Court, whenever said complainant shall execute and file his bond to said William F. Morris, with James S. Conway and Simon L. Higgs as securities, in the sum of $8000, conditioned according to law; whereupon said bond is filed, and by said Morris admitted as sufficient, and said order for injunction is thereupon made absolute, and by consent of said William F. Morris it is ordered, that no writ of injunction need issue, but that he take notice of this order and obey the same, as if a writ had been issued and been served on him; and said William F. Morris also waives the necessity of subpœna, and enters his appearance to said bill, and agrees to plead, answer, or demur, at the next Term of this Court.

And it appearing, by the affidavits annexed to said bill, that said Keziah Taylor is a non-resident of this State, it is therefore ordered that she be notified by publication of this order, for the length of time, and number of times, and in the time required by law, in some newspaper published in this State, that this suit is pending, the object of which is, to obtain a decree, declaring said Morris a trustee for said complainant of the N. W. ¼ of Section 18 in Township sixteen (16), S. of R. twenty-five (25) west, entered and purchased of the United States, under pre-emption granted to said Keziah Taylor under Act of May 29th, 1830, on the ground that such pre-emption was invalid and fraudulently conferred, and to compel said Morris to transfer the same to the complainant, on being paid therefor such sum as the Court shall decree; and, unless she appears before the Court here on or before the 4th day of the next term thereof, to be holden on the fifth Monday after the 4th Monday of September next, at the court-house in the Town of Lewisville, in Lafayette County, and plead, answer, or demur, to said bill, the same will be taken as confessed against her, and decree accordingly.

The complainant's said bill of complaint is in words and figures following.

Lafayette Circuit Court.

To the Honorable, the Judge of the Circuit Court of the County of Lafayette, in the State of Arkansas, in Chancery.

William Wynn, a citizen of said County of Lafayette, brings this, his bill of complaint, against Keziah Taylor and William F. Morris, defendants herein, and thereupon your orator complains, and says:

That about the year 1820, one William Hemphill settled in what is now Lafayette County, upon a tract of land south of Red River, in Fisher's Prairie; that said tract of country was not then surveyed, and it was supposed, that whenever the line between the United States and Mexico should be run and determined, it would be found to be in the Republic of Mexico, which line was run by the authority of the proper Government in the year 1840 or 1841, and said prairie then found to be in the United States; and, in the year 1841, the same was surveyed by the United States, at which survey it was found, that the said settlement of the said William Hemphill was upon the S. W. ¼ of Section 7, in *in* T. 18 S. of R. 25 W. of the 5th principal meridian.

He further represents that, as he is informed and believes, some time in the year 1824, the said William Hemphill died, leaving a widow and two children (one of which children has long since died) in possession of the settlement and improvement he had made. That soon after, his widow, Keziah Hemphill, now as the defendant Keziah Taylor, intermarried with one Thomas Jacobs, who died in the year 1828, leaving his said wife a widow with one child or more, one of which is still living, its name and age unknown; that during their marriage the said Thomas Jacobs and his wife continued to live upon and cultivate said improvement, and so did she continue after his death until about two years thereafter, when she wholly abandoned the same, and removed to the Republic of Texas, then a foreign country beyond the limits of the United States, with the intention of permanently remaining there, and never returning to the United States.

He further represents that before so removing, the said Keziah made a bargain and agreement with one Alexander P. Bales, that he should collect together and confine the horses, cattle, and other stock belonging to her, then running at large in the range, in order that it might be driven to her intended place of residence in Texas; and that, as his remuneration thereof, he should have the said improvement and settlement, with which contract said Bales complied, by collecting and confining her said stock, and accordingly took possession of and went to remove on said improvement in the year 1829 or '30, and in about a year sold the same to Morgan Cryer, who sold the same to one Andrew Hemphill, who took possession of the same and resided thereon, until 1835, when he sold the same to Samuel

P. Carson, who took possession of the same and resided thereon, and cultivated the same from that time until his death, in the year 1837, and after his death, Robert Hamilton, who was the executor of his last will and testament, sold said improvement at public sale to the last and highest bidder, in the month of March, A. D. 1838, at which sale one Charles Carson purchased the same, and immediately sold it to one Jacob Buzzard, who, in the year 1840, sold the same to your orator, and put him in peaceable possession thereof, and executed to him conveyance therefor, which is herewith exhibited, marked A, and prayed to be taken as part of this bill, but of the other sales and transfers he has no written evidence, nor does he know whether any exists or ever did exist, except of that from Hemphill to Carson, of which a written evidence exists, and is of record in said County of Lafayette. And your orator prays leave hereafter to exhibit the same, marking it 55, and prays that when exhibited it may be taken as part of this bill.

Your orator further represents, that from the time he so purchased of said Jacob Buzzard, he has had the continual, uninterrupted, and peaceable possession of said improvement, and of the whole of said S. W. ¼ of said section 7, has extended his improvement thereon, and has every year cultivated a part of the same as part of his plantation.

Your orator further represents, that after said Thomas Jacobs died, which was in the year 1828, the said Keziah, although she continued to reside upon said quarter section until some time in the year 1830, never did cultivate any portion of it whatever, not even as a garden.

He further represents, that after removing to Texas, said Keziah, who has since died, and in that republic resided for nearly or quite twelve years from the time of her removal there, without even ever visiting the United States, until in December, 1842, at the solicitation of the defendant, William F. Morris, she returned to Arkansas, for the purpose of defrauding your orator, by falsely proving up a pre-emption, as will be hereafter stated.

Your orator further represents, that directly south of said quarter section, along its whole southern line, lies the northwest quarter of section 18, in the same township and range; that several years before 1829, one John Cryer settled said northwest quarter of section 18, and the northeast quarter of the same section, and there made an improvement, which, prior to 1829, he sold to one Massack H. Jones, who then settled thereon, and cultivated thereafter parts of both said quarter sections, and either said Cryer or said Jones laid thereon a Mexican claim to a grant of a league and a lobar of land, which included the whole of said northwest quarter and about half of the northeast quarter of section 18, and some of the southern part of the southwest quarter of section 7; that said Jones lived on and cultivated said improvement until 1833, when he sold to Dr. Jones,

who lived on and cultivated the same until 1835, when he sold it to your orator; that from long before the year 1829, up to, and till the present moment, every acre of said northwest quarter of section 18 has been in the possession of, and in the exclusive possession of said Cryer, James Jones, and your orator, and since long before the year 1841, wholly enclosed within the fences of, and forming a part of your orator's field and plantation. That in 1840 and 1841, in which years said lands were surveyed by and under the authority of the United States, by Allen Martin and Charles E. Moore, Deputy Surveyors, said northwest quarter was so included in your orator's fences, was so stated on the field books, and so carried afterwards upon the official plots of said township, made out by the Surveyor-General of Arkansas, and furnished the Register of the Land Office at Washington.

He further represents, and especially avers, that neither the said Keziah nor any one of her husbands, ever lived or resided on, or built, or had possession of, or cultivated a foot of ground on said northwest quarter of section 18, but their residence, cultivation, and improvement was exclusively upon said southwest quarter of section 7.

He further represents, that by an act of the Congress of the United States, approved September 4th, A. D. 1841, entitled, An Act to appropriate the proceeds of the sales of the public lands, and to grant pre-emption rights, there were granted to the State of Arkansas 500,000 acres of public land, for purposes of internal improvement, to be selected within the limits of the State, in such manner as the Legislature thereof should direct, in parcels conformably to sectional divisions, and such divisions, of not less than 320 acres in any one location, or any public land except such as then was or thereafter might be reserved from sale by law of Congress, or proclamation of the President, at any time after such lands had been surveyed.

And by another act of said Congress, approved the 19th day of March, A. D. 1842, entitled, An Act to authorize the Governors of the States of Illinois, and Arkansas, and Missouri, to cause to be located the lands therein mentioned, the former act was so far modified as to authorize the Governors of those three States to cause to be made the selections for their States without the necessity of convening the Legislature thereof for that purpose.

Your orator further represents, that on the 2d day of April, A. D. 1842, his Excellency, Archibald Yell, then Governor of this State, appointed the said Charles E. Moore as locating and selecting agent, to make selections and locations south of Red River, of the lands so granted to said State, and so authorized to be selected; who accepted said appointment, and proceeded to discharge the duties imposed on him thereby; whereupon said Governor, by his printed instructions, dated the 13th day of April, A. D. 1842, instructed as well the said Moore as all other locating agents by him appointed, in what manner

to make such locations, and directed him whenever he should have located the quantity of two thousand acres, to report to him by the first mail.

Your orator further represents, that said Moore was further instructed by said Governor to locate and select such lands as should be indicated to him by actual settlers, upon their request and application, in the name of such settlers, but otherwise and without their assent to select no lands on which any person had improvements, or was cultivating, and agreed with your orator and other planters on the public lands in that region of country, that such entries should be made for the benefit of the person cultivating, who should be allowed the privilege of purchasing them from said State, on such terms and at such price as the Legislature should thereafter fix and prescribe; all which was done by his letter of 2d April, 1842, and by letter of 15th April, 1842, delivered to said Moore; and your orator exhibits herewith a copy of said printed instructions, and marks the same B., and a copy of said letters, and marks the same V. X. and V. Z., and prays that they may be taken as part of this bill.

Your orator further represents, that as any land to which a valid pre-emption existed was in law reserved from sale, no selections of any such lands should be made under such grant, and so the Commissioner of the General Land Office instructed all Registers of Land Offices, by his circular of 2d May, 1842, and informed the Secretary of the Treasury, by letter of December 2d, 1841; and he represents that at the passage of said act of Sept. 4th, 1841, said N. W. $\frac{1}{4}$ of section 18, and S. W. $\frac{1}{4}$ of section 7, had both been surveyed according to existing laws of the United States, that there was not, either then or thereafter, any valid pre-emption to either, under any existing law of Congress, and that said lands were in no wise reserved from sale, and were public unappropriated lands of the United States, up to the time when they were selected and located for him by said Moore, under said grant, as will be hereinafter stated.

Your orator further represents, that on the 16th day of May, A. D. 1842, and the 28th day of April, 1842, at the request of your orator, the said Charles E. Moore, as such selecting agent, did select and locate as a part of the lands granted as aforesaid for the benefit of your orator, and, under said agreement with said Governor, the said N. W. $\frac{1}{4}$ of section 18, and the S. $\frac{1}{2}$ of section 7, and other adjoining lands, by sectional divisions and subdivisions, making a body of more than 320 acres, all liable and subject to location under said act of Congress, and immediately on making such first location, reported to said Governor a list of said lands, and other lands located and selected by him, including said S. W. $\frac{1}{4}$ of section 7, and also notified the Register of the Land Office at Washington, Arkansas, in which district the said lands lay, that such locations and selections had been made, specifying them, and among them such location in

favor of your orator; and on the 12th day of May, 1842, said Governor by letter notified the Commissioner of the General Land Office of the United States that he had caused to be selected, as a portion of said 500,000 acres of land so granted to said State, the lands so reported to him by the said Charles E. Moore; and also on said last-mentioned day forwarded a copy of said list to the Register at the Land Office at Washington, Arkansas, and notified said Register to withhold said lands from sale or entry.

All which, by a true copy of so much of said list, reported by said Moore, as included said S. W. ¼ of section 7, and of the letter of his Excellency, the said Governor, to said Commissioner, and to said Register, as the same now remain of record in the Executive Office of the State of Arkansas, at Little Rock, which are herewith exhibited, marked B 3, and prayed to be taken as part of this bill, will fully appear.

And on the said day of May, A. D. 1842, the Commissioner of the General Land Office addressed a circular letter to the registers of all the land offices in the United States, and among others to the Register of the Land Office at Washington aforesaid, by whom the same was afterwards received, whereby he prescribed and defined their duties in regard to the locations and selections made and to be made by virtue of the acts aforesaid, and directed, among other things, that from time to time as the selecting agents should make report to them of the lands selected, they should note the same on the tract books and maps in their offices, and also make a record book suitably arranged into columns, wherein they should register all the lists that might be filed in their offices, and transmit a copy of each to the General Land Office from time to time as they should receive them, and said circular letter further prescribed, that each selection made by the selecting agent should indicate the day when it was actually made, so that the General Land Office might be enabled to determine between such selection and any pre-emption claim.

Upon the receipt of which circular, and the opinion of said Commissioner, in response to a letter of said Governor thereto annexed, showing that the title of said State to the lands selected (if subject to selection,) became absolute from the day of selection—the said Governor by letter of date May 23d, 1842, informed the locating agents, and among them Charles E. Moore, that they could make their selections and report them directly to the register of the district in which the lands selected lay, and required them still to forward to the executive department of the State a copy of such selections, as required by his former instructions, and particularly instructed them not to fail to note in their list the particular day when each selection was made, all which will more fully appear by reference to a true copy of said circular as far as it is above quoted, and the opinion thereto annexed, and of the letter of said Governor thereto annexed, which is herewith exhibited, marked B 4; and by a copy of

a letter of said Governor to said Commissioner, dated 23d May, '42, which is exhibited, marked B 7; all which are prayed to be taken as part of this bill.

Whereupon, on the 2d day of June, A. D. 1842, the said Charles E. Moore forwarded to said Governor a list of all the lands located by him as such selecting agent, noticing therein, the true and precise date of each location, among which he reported said N. W. ¼ of section 18, as having been located and selected by him as a part of said 500,000 acres, on the 16th day of May, A. D. 1842, and said S. ½ of section 7, on the 28th April, 1842, which report and list was duly certified by him, and a correct copy thereof forwarded to said Register at Washington, on the 8th day of June, A. D. 1842, there to be recorded, and then to be forwarded to the General Land Office, according to said circular, as by a true copy of so much of said list as reports the location of said quarter section, and of the certificate of the said Charles E. Moore, and the memoranda of said Governor thereto appended, as the same now remain of record in the Executive Office of said State, which copy is herewith exhibited, marked B 5, and prayed to be taken as part of this bill, will more fully and at large appear.

Whereby, on the 16th day of May, A. D. 1842, the said N. W. ¼ of section 18, ceased to be public land of the United States, and the title thereto vested absolutely in said State, as trustee for your orator, with whose agent, and at whose request, and for whose benefit the same had been located under said agreement with said Governor, and said State was bound to convey the same to him on payment of such part as should thereafter be fixed by the legislature.

Your orator further represents, that on the 31st day of December, A. D. 1842, by act of the General Assembly of this State, on that day approved, entitled An act for the benefit of such persons as have settled on, or have made improvements on the public lands of this State, and also for such persons may hereafter settle on, or improve any of such lands, it was, among other things, enacted that the Governor was authorized, with the written assent, and at the written request and application of any person who had settled or made improvements on any public lands in this State, or might thereafter do so, before said act should expire, to locate the lands including his settlement and improvement under said grant of 500,000 acres, if such person would agree to pay said State therefor, at the rate of two dollars per acre, and execute bonds therefor, payable by ten annual instalments, with interest thereon from date, at six per centum per annum, upon the execution of such bond, the Governor should grant, under the seal of the State, a certificate of location, covenanting that deed should be made for the land located, on full payment of the bond, but that no person could have so located for his benefit, more than one-half section of land, and that all persons then or thereafter settled, on any of the lands theretofore located under said grant,

should be entitled to, and have all the benefit of the provisions of that act.

And by another act, approved the 4th day of February, A. D. 1843, supplementary to said last-mentioned act, it was further enacted, that all persons purchasing under the former act should receive an absolute deed, upon paying up the sum of two dollars per acre, with interest at six per cent. from the time of purchase to payment, and that persons entitled to the benefit of that former act, who had made improvements larger than could be covered by that act, might purchase at five dollars per acre, a further quantity not to exceed 1280 acres, to be located as they might direct, not interfering with the improvement of any other person, and such purchase should be governed by all the provisions of the former act.

Your orator further represents that on the day of December, A. D. 1842, the said Keziah, by the procurement of said William F. Morris, returned into the State of Arkansas from the foreign Republic of Texas, to which she had expatriated herself and where she had become a citizen and owed allegiance, after a continuous absence from the United States, and other abandonment of her said improvement, for twelve years, and without again settling upon or attempting or intending to settle on said improvement, and either knowing that it was not made upon, and that she never lived upon or cultivated any part of said N. W. ¼ of sec. 18, or if she did not know that fact, at the least, not caring to ascertain on what quarter she did live and cultivate, and what she might easily have done, she filed in said Land Office at Washington, an application for a pre-emption right to, and the entry of said N. W. ¼ of sec. 18, and proceeded to prove such pre-emption by then and there most falsely, and either intentionally so, or by mistake, and most culpable and criminal carelessness, swearing that she was in possession of said N. W. ¼ of sec. 18, on the 29th day of May, 1830, and cultivated thereon in corn and cotton, in the year 1829, from fifteen to twenty acres, every word of which was an utter falsehood, and by procuring the affidavits of George Dooly and John Waggoner, to the same facts given under a total mistake as to the number of the lands on which she did live in 1829 and 1830.

Upon which false evidence, taken ex parte, and with no oportunity on the part of your orator to controvert the same, and the Register and Receiver at Washington being thereby grossly deceived, and also being wholly ignorant that said Keziah had been for twelve years, and was then, a citizen of a foreign republic with her domicil still in that republic, or that she had twelve years before abandoned her improvement, and lost the benefit of any pre-emption she might have had to the S. W. ¼ of sec. 7, they granted her said pre-emption notwithstanding the previous entry of said land, by said State, for your orator, and notwithstanding the evidence of such entry then on file in their office; immediately after which said Keziah returned to

Texas, and has ever since remained there. And the said William F. Morris, the acting agent in proving up said pre-emption, and who had theretofore bought of her her pretended claim, then applying in her name to enter said N. W. ¼ of sec. 18, under such false pre-emption, and paying therefor the government price of $200, the entry was allowed, and certificate of entry issued to said Keziah, who immediately transferred the same to said William F. Morris, and a patent has thereupon been since issued by the President of the United States. Your orator desired to exhibit herewith a copy of said pre-emption, proof, and affidavits, and to mark the same e. 1, and pray the same to be taken as part of this bill. But after diligent search by both land officers at Washington the same cannot there be found, where by law they should be kept, nor does he know where they are or how to obtain a copy; and he expressly avers that said Morris either well knew, when he brought said pretended claim of said Keziah, and when he aided in proving up her false pre-emption, and when he entered said land thereunder, or might have known if he had cared to attempt to ascertain, that she never in her life lived on or cultivated a foot of ground on said N. W. ¼ of 18, and that he did positively well know that the whole of that quarter section had been since long before 1841, included in your orator's field within his fences; and moreover, he perfectly well knew that said Keziah was committing a fraud by proving up any pre-emption; that she had in 1830 abandonded her improvement and removed to Texas, and there remained twelve years, claiming citizenship, and being a citizen of that republic, with no intention of returning; and that after she abandoned the same, it had been taken possession of by said Bales, and had come into your orator's possession in 1840, by the various transfers above mentioned, of all which he was very well informed. Your orator further represents, that in consequence of the establishment of said pre-emption of said Keziah Taylor, and its allowance by said land officers, and the entrance of said quarter section thereunder, the said entry and selection of said tract under said grant by said State was utterly disregarded, and held by the General Land Office to be nullified, and your orator was thereby prevented from carrying out his contract with said Governor, which by virtue and operation of the two acts of Assembly operating by relation, as to one tract, to said 16th day of May, 1842, and as to the other, to said 28th day of April, 1842, had become a positive and irrevocable contract as of the said 28th day of April and said 16th day of May; that said State had entered said land for your orator, and held them as trustee, to convey to him with the other lands selected for him, upon his paying or receiving the price thereof fixed by said acts, to wit: for 320 acres $640, and for the residue five dollars per acre, although he was ready and willing to carry out his said contract, and prepared to do so immediately upon learning that he was allowed to do it and upon what terms; but before the

law was passed, which authorized him to purchase, and fixed the terms of purchase, said pre-emption of said Keziah was proven up, and the power of the State to sell was gone; and the Courts of the United States being closed to your orator for want of jurisdiction, and the title having passed from the United States, and said selection having been abandoned by said State, and other selections made, instead of her adhering to said selection and protecting your orator as she should have done, nothing was left for your orator but to appeal to the equity powers of this honorable Court.

He further represents, that, as he has stated, said Charles E. Moore also located for your orator, on the 28th of April, 1842, the said S. W. ¼ of section 7, which location was also rejected by the Commissioner of the General Land Office, and the same was, on the 26th of January, 1846, relocated by Henry Cheatam, and by him, on the 27th November, 1843, sold and assigned to your orator, who executed therefor his bond to said State, and has thereby become the absolute owner of said tract.

All which acts and doing of said defendants, Keziah Taylor and William F. Morris, who are prayed to be made defendants to this bill, are contrary to equity and good conscience, intended and calculated to defraud your orator and to rob him of a valuable tract of land, on which he has bestowed great labor and expended much money, to cut up and ruin his plantation, and plant in the centre of it a stranger owning a tract of land surrounded on all sides by your orator's lands, and therefore entitled to a servitude of a right of way for egress and ingress over other lands of your orator, which would be an intolerable evil and oppression, and actually give said Morris, in consequence of his fraudulent and unscrupulous conduct, and as a reward for it, an interest and estate in other undisputed lands of your orator, to the injury of your orator of at least ten thousand dollars, if not to an amount incalculable.

Therefore, your orator has often requested said Morris to transfer to him the title he had thus obtained by fraud or mistake, which he has refused to do, and has, on the contrary, instituted against him in this honorable Court an action of ejectment for said N. W. ¼ of section 18, against which suit and his title by patent, your orator, having no power to defend at law, he has, on the 30th day of April, A. D. 1850, obtained judgment therein and order of a writ of possession, which he is about to cause to issue, and judgment for $1710 for rent, and is about to enforce execution of the same.

In tender consideration whereof, and as your orator is remediless in the premises by the will of the law, and relievable only in a court of equity, to the end, therefore, that the said defendants may, on their respective oaths, full, true, direct and perfect answer make to all and singular the matters and things hereinbefore alleged, stated, averred, or charged, as fully and particularly in every respect as though the same were here again repeated, each in the shape of an

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interrogatory, and they respectively thereunto specially interrogated, and that by decree of this honorable Court the said William F. Morris may be declared a trustee for your orator, and adjudged and decreed to hold the title to said N. W. ¼ of section 18, in trust for your orator, and convey the same to him upon receiving therefor the sum of 320 dollars, with interest at the rate of six per cent. per annum, from the said 16th day of May, 1842, until paid, or such other sum as this honorable Court shall decree, which sum your orator is ready and willing and hereby offers to pay, whenever said Morris shall desire or this Court order and direct, and that said Morris and said Keziah be perpetually enjoined from hereafter setting up, or pretending to or attemping to enforce any claim or title whatever to said tract of land, and said Morris perpetually enjoined from attempting to proceed upon or execute his said judgment at law, and that your orator may have such other and further relief as may be consistent with equity and meet for the nature of his case, he prays not only process of subpœna, but also a writ of injunction to restrain said William F. Morris from proceeding on or attempting to enforce his said judgment at law, until the further order or decree of this honorable Court, and he will in duty bound ever pray.

PIKE & CUMMINS,
Solicitors.

Lafayette, *sct.*

I, William Wynn, do solemnly swear that the matters stated in the foregoing bill, so far as stated of my knowledge, are true, and so far stated as on information and belief, I believe them to be true, and that said Keziah Taylor is a non-resident of this State: so help me God.

WILLIAM WYNN.

Sworn to and subscribed in open court, this 2d day of May, A. D. 1850.

A. BYRNE,
Clerk.

Filed May 2d, A. D. 1850.

A. BYRNE,
Clerk.

The bond upon which the injunction prayed for in the foregoing bill was granted appears in the words and figures following, to wit:

Know all men by these presents, that we, William Wynn, as principal, and James S. Conway and Simon L. Higgs as securities, are held and firmly bound unto William F. Morris in the just and full sum of $8000 lawful money of the United States, to the payment whereof, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

The condition of the above obligation is such, that whereas the said William Wynn hath this day exhibited, in the Lafayette Circuit Court, Arkansas, his bill of complaint in chancery against said William F. Morris and Keziah Taylor, whereby he prays relief, &c., and a writ of injunction to restrain the said William F. Morris from execution of a certain judgment at law, by him obtained against said William Wynn, in the said Court, on the law side thereof, at April Term, A. D. 1850, in a certain action of ejectment for the N. W. ¼ of Section 18, in T. 16 S. of R. 25 W., in said county.

Now, therefore, if the said William Wynn shall abide the decision which may be made in said suit in chancery, and pay all sums of money and costs which may be adjudged against him, if said injunction be dissolved in whole or in part, then this bond to be void, else to remain in full force.

WILLIAM WYNN, [SEAL.]
J. S. CONWAY, [SEAL.]
I. L. HIGGS. [SEAL.]

Filed May the 2d, 1850.

A. BYRNE,
Clerk.

The following are the Exhibits referred to in the foregoing bill, each with its respective mark, &c.

Memorandum for Mr. Moore.

*Exhibit V.*

April 2d, 1842.

Folio 1.

Sir: As I shall be under the necessity to make all the selections as I possibly can (so as not to interfere with the claims of individuals on Red River), it will be greatly to the advantage, no doubt, of the planters there, to purchase a portion of the 500,000 acres, and locate their improvements, and such other lands as they may desire, in the event they should be disposed to do so. You are at liberty to say to them, that I will secure their lands on reasonable terms, such as we can agree on, subject to the confirmation of the Legislature. Under the Act of Congress I am not authorized to sell. I will take the responsibility, however, to contract with them in such a way, that, as they cannot be losers, if the Legislature should refuse to confirm the conditional sale, as I shall have the locating; and if the trade is not confirmed, then the location to be void, and they can still hold their lands. I shall only require, on their part, bond, and sufficient security for the purchase-money, at say from one to three years for payment, and no money or obligation to be given until the contract is confirmed. Any contract which I might make on such conditions, at a fair and reasonable price for both the State and purchaser, will, no doubt, be confirmed; and I pledge myself that the

contract shall be so drawn, that they will not be losers if not confirmed. Let me hear from you; and, if necessary, I will go to Washington and see such as wish to secure their plantations.

Yours,

A. YELL.

List of lands located south of Red River, May 12, 1842, by C. E. Moore.

*A.*

EXECUTIVE DEPARTMENT,
LITTLE ROCK, ARKANSAS, 12th May, 1842.

Folio 2.

I, A. Yell, Governor of the State of Arkansas, by virtue of an Act, entitled, An Act to authorize the Governors of the States of Illinois, Arkansas, and Missouri, to cause to be selected the lands therein mentioned, approved this 19th of March, 1842, do hereby notify the Commissioners of the General Land Office, that I have caused to be selected, as a portion of the 500,000 acres donated to the State of Arkansas for internal improvement, the following List of Lands for your approval.

A copy of the within described lands I have this day forwarded to the Register of the Land Office at Washington, Arkansas, and notified him to withhold them from entry or sale, to wit:

* * * * *

The south half of Section 7, Township 16 South, Range 25 West.

A. YELL,
Governor of Arkansas.

To the Commissioner of the General Land Office, Washington.

EXECUTIVE DEPARTMENT,
LITTLE ROCK, May 12, 1842.

Folio 3.

I, A. Yell, Governor of the State of Arkansas, by virtue of an Act, entitled, An Act to authorize the Governors of the States of Illinois, Arkansas, and Missouri, to cause to be selected the Lands therein mentioned, approved the 19th of March, 1842, which is a supplemental act to the Act entitled An Act to appropriate the proceeds of the sale of public lands, and to grant pre-emption rights, &c., approved the 4th of September, 1841, do hereby notify the Register of the Land Office at Washington, Arkansas, that I have caused to be located, as a portion of the 500,000 acres of land donated to the State of Arkansas for internal improvement, the following List of Lands, which you will please withhold from sale or entry. The within described lands are a true copy of the selections made, and this day forwarded to the Commissioner of the General Land Office for his approval.

A. YELL,
Governor of Arkansas.

To the Register of the Land Office, Washington.

N. B. Accompanying this notice is a true and exact list of lands selected and forwarded to the Commissioner of the General Land Office, marked A., and dated 12th May, 1842.

A. YELL.

Attest,
JOHN WIDGENS.

*Exhibit V. Z.*

EXECUTIVE DEPARTMENT,
LITTLE ROCK, April 15, 1842.

Folio 4.

Dear Sir: This will inform you of your appointment as locating agent of portions of the 500,000 acres, &c.

Your district will for the present be on Red River, all that portion south of the river in Lafayette County. Your operations will be governed very much by the determination of the planters in that quarter to purchase of the State. If they decline to purchase, then you will secure all the lands you can, so as to keep within the spirit of the instructions which are herewith enclosed you. Keep vouchers for all contingent expenses, and a memorandum of your own expenses. Write to me as often as the public service will require, &c., and, if necessary, you can draw upon me for $100 for contingent expenses, forwarding your receipt for the same.

With respect, yours,

A. YELL.

CHARLES E. MOORE, present.

(*Exhibit B*, 7.)

EXECUTIVE DEPARTMENT, LITTLE ROCK, May 23, 1842.

To the Commissioner of the General Land Office.

Sir: I acknowledge the receipt of your letter of instructions to the Register of the several land offices in Arkansas, in relation to the selection of the 500,000 acres of land granted to the State of Arkansas for internal improvement, on the 13th April previous, to the date of your instructions. I had furnished my locating agents with instructions, a copy of which I have enclosed for your inspection. I am pleased to find that my instructions do not come in conflict with those from your department. On the contrary, yours are more liberal, and the mode of locating and reporting to the registers more satisfactory than the course which I had adopted. I shall, therefore, direct my agents to conform to them in future. The report which I made to you on the 12th of May, instant, I will direct the agent to report to the Register the particular day on which the selections were made. You will, therefore, take no action upon the report of the list which I made to your department until the Register shall make his report. You will see that I have endeavored

to avoid any conflict with the settlers on the public lands, and shall continue to do so.

I have the honor to be, very respectfully, your obedient servant,

A. YELL.

*Exhibit B*, 5.

EXECUTIVE DEPARTMENT, LITTLE ROCK, 27th May, 1842.

The following selections of a part of the 500,000 acres of land donated to the State of Arkansas for internal improvement was received on the 26th instant, made by Daniel M'Clellan and John L. Ficklin, locating agents, which has this day been filed in the Register's office, at Little Rock, to wit:

A list of land, located south of Red River, for the State of Arkansas, as a portion of the 500,000 acres donated to the State of Arkansas for internal improvement when selected.

April 28th, 1842. The south half of section 7, township 16 south of the base line, range 25 west of the 5th principal meridian, containing 316 21-100 acres, claimed by W. Wynn.

May 16, 1842. Also the northwest quarter of section 18, in township 16 south of the base line, range 25 west of the fifth principal meridian, containing 156 11-100 acres, cultivated by Col. Wynn.

P.S. A correct copy of the foregoing report, it being the original, was forwarded to the Register at Washington, on the 8th June, 1842.

A. YELL.

I, Charles E. Moore, locating agent, certify, that I have made the above selections of land for the State of Arkansas, as a portion of the grant to the State of 500,000 acres for internal improvement, and that they have been made in accordance with the instructions of the Governor of this State, of the 13th April last, and the private instructions of the Commissioner of the General Land Office, of the 2d May, 1842, to the registers of the several land offices in the State of Arkansas.

CHARLES E. MOORE.

2d June, 1842.

P.S. This report embraces all the selections made in the first report of Charles E. Moore, marked A, and dated 12th May, 1842, a copy of which was furnished the Commissioner of the General Land Office at Washington.

A. YELL.

LITTLE ROCK, 8th June, 1842.

LAND OFFICE OF THE STATE OF ARKANSAS, LITTLE ROCK, March 12, 1850.

State of Arkansas, City of Little Rock.

I, Lambert J. Reardon, land agent of the State of Arkansas, do

hereby certify and make known, that the foregoing eight folios are true and exact copies of the original entries made in a book, which remains among the records of my office, styled the land book of returns, kept by his Excellency, Archibald Yell, while Governor of the State of Arkansas, in which both the paper marked Y, being the memorandum for Mr. Moore, dated 2d April, 1842, and the letter to Charles E. Moore, dated 15th April, 1842, are in the handwriting of the said Governor Yell himself.

Given under my hand this 12th day of March, A.D. 1850.

L. J. REARDON,
Land Agent.

*Exhibit B*, 2.

EXECUTIVE DEPARTMENT, LITTLE ROCK, April 13th, 1842.

Sir: The following section of the Act of Congress, in connection with previous pre-emption laws and reservations, will govern you in the selection of a portion of the 500,000 acres of land donated to the State of Arkansas for internal improvement.

Sect. 8th. And be it further enacted, That there shall be granted to each state specified in the first section of this act, four hundred thousand acres of land for purposes of internal improvement; provided, that to each of the said states which has already received grants for said purposes, there is hereby granted no more than a quantity of land which shall, together with the amount such state has already received as aforesaid, make 500,000 acres. The selections in all of the said states to be made within their limits respectively, in such manner as the legislature thereof shall direct, and located in parcels conformably to sectional divisions and subdivisions, of not less than 320 acres in any one location on any public lands, except such as is or may be reserved from sale by any law of Congress or proclamation of the President of the United States, which said location may be made at any time after the lands of the United States in said states respectively, shall have been surveyed according to existing laws.

From the foregoing you will be enabled readily to determine, in most cases, what lands are exempt from location, and what improvements and claims are embraced within the provisions of the act; and in all doubtful cases to decide in favor of the claimant, but when made, note in your return the nature of the claims.

You will use all reasonable and proper means to inform yourself where the best selections can be made in the section of country where you are operating, and in every instance to make personal examination of the land selected.

Distinguish in your filed notes the quality of the land, whether first or second quality, its general advantages, note course, &c., and such other remarks as you may think necessary.

And whenever you reach the quantity of 10,000 acres, report to me by the first mail. You will make no selections which you do not

consider first rate, or very good second rate land. You will designate on the township plats (which I enclose you), independent of your field notes, as accurately as you can, the rivers, lakes, swamps, springs, &c., which may embrace your selections.

The land to be selected in parcels not less than 320 acres, conformably to sectional divisions and subdivisions; thus, the north, south, east, or west half of a section may be taken, or two quarter sections, contiguous and adjoining sections, or the west half of the northeast quarter, the east half of the northwest quarter, and the contiguous numbers in the same section or adjoining section; so that the 320 acres adjoin. Be very careful in taking your numbers that no error is committed, and report here when you have a reasonable doubt.

Make your field notes in a fair and legible hand, sufficiently full to describe the general character of the land selected, which you will seal up with the plats, and forward to me as before directed. You will not fail to take with you a compass and chain, to be used when necessary, and to keep vouchers for all contingent expenses for location which may be indispensable, not to exceed the amount of funds furnished you, and to keep an account of all your own expenses, and time employed in locating, &c.

And for your compensation you must rely upon the liberality of the legislature, to whom your claim will be submitted.

A. YELL.

*Exhibit B*, 4.

Circular to Registers of the United States Land Offices.

GENERAL LAND OFFICE, May 2d, 1842.

Sir: Under the provisions of the 5th section of the act, approved on the 4th September, 1841, entitled "An Act to appropriate the proceeds of the sale of the public lands, and to grant pre-emption rights," the State of Arkansas is entitled to select the quantity of 500,000 acres of unappropriated public land, granted to that State by the aforesaid act, for purposes of internal improvement: in order to effect the due execution of the law, I have, with the approbation of the Secretary of the Treasury, to enjoin on you the rigid observation of the following instructions.

In making these selections it is expected that the state authorities will observe the precaution of causing all the preliminary examinations to be made by their duly authorized agents, necessary to arrive at certainty as to the fact that none of the particular tracts of land selected by them are or can be claimed as pre-emption rights, in virtue of the act aforesaid, or of any prior pre-emption law; otherwise such interference will nullify the selection.

* * * * * * *

From time to time as the selecting agents shall make reports to you of the lands selected, it will be your duty to note the same in a

distinct and neat manner on the tract books and maps, in red ink, and also to make a record book, suitably arranged into columns, wherein you are to register all the lists that may be filed in your office, and transmit a copy of each to this office, from time to time, as you receive them.

These lists are to be numbered in a regular series so soon as a list of tracts so selected is received at your office; it will be your duty to examine the same, and compare it with your books and with the statements filed under the Act of 4th September, 1841, and in case of conflict arising with an alleged pre-emption claim, you will immediately advise the Governor of the State of the fact, and furnish similar advice to this office.

Each of the selections made by the locating agent should indicate the day when actually made, so as to enable this office to determine between such selection and a pre-emption claim under Act of 4th September, 1841, which shall refer to the date of settlement.

* * * * * * *

Annexed is a copy of a communication addressed to the Secretary of the Treasury on 2d December last, in reply to certain inquiries propounded by the Governor of Arkansas relative to the construction of the 8th section of the Act of 4th September, 1841.

I am very respectfully, your obedient servant,

E. M. HUNTINGTON,
Commissioner.

The Register of the Land Office at ——

GENERAL LAND OFFICE, December 2d, 1841.

SIR: I have examined the question raised in the question of Governor Yell, of Arkansas, addressed to you, under date of 3d November, and referred to this office in relation to the construction of the 9th (I presume he means the 8th) section of the distribution act, authorizing the location of 500,000 acres of land by the legislatures of the respective States mentioned in the first section of the act. As the grants to the States is not one *in presenti* but dependent upon the subsequent action of the legislatures of the respective States, and inasmuch also as the 10th section of the same act grants to certain persons therein named, the right to enter not exceeding one hundred and sixty acres, the land settled upon and improved by them, I am of opinion that the States have no right to select any land to which a valid pre-emption right exists under any of the existing laws of Congress at the time of such selection by the State, nor to any land which at the date of the law was or which prior to such selection by the State may be reserved by any subsequent law of Congress, or proclamation of the President of the United States.

I am, with great respect, your obedient servant,

E. M. HUNTINGTON,
Commissioner.

Hon. W. FORWARD, Secretary of the Treasury.

EXECUTIVE DEPARTMENT, LITTLE ROCK, May 23, 1842.

Gentlemen: Since my letter of instructions, of the 13th April, I have received the above communication from the Commissioner of the General Land Office, directed to the Register of the several land offices in the State of Arkansas, from which you will learn that the agents can make their selections and report them direct to the register of the district in which the lands are situated. You will not fail, however, to forward to this department a copy of your selections as required by my former instructions of the 13th April. In the future you will not be governed by the quantity of 10,000 acres, as heretofore directed, but make your report every two weeks. When the selections come in conflict with the rights of claimants, you will endeavor to reconcile the claim with the Commissioner's letter and my instructions, and report accordingly. You will not fail to note in your selections the particular day when the lands are selected, as that time may be important in settling conflicting claims. You will not vary from my former instructions, except when they may come in conflict with the letter of the Commissioner, as to the manner of reporting selections, which you will strictly observe.

The plats with the field notes and selections will be reported to this department every two weeks.

I am, with great respect, your obedient servant,

A. YELL.

CHARLES E. MOORE, JOHN R. CONWAY, JOHN CLARKE, JOHN O. FICKLIN, DANIEL MCLELLAN, DAVIS THOMPSON, AND E. H. FLETCHER,
Locating Agents.

Filed May 2d, 1850.

A. BYRNE,
Clerk.

At a Circuit Court in Chancery, begun and holden at the court house, in and for the County of Lafayette and State of Arkansas, on Monday, the 28th day of October, A. D. 1850, the time prescribed by law for holding said court, present and presiding the Hon. John Quillier, Judge of the Sixth Judicial Circuit in the State of Arkansas, and as such exercising chancery jurisdiction; and on a subsequent day thereof, of said term, to wit, the 29th day of October, A. D. 1850, present and presiding as of the first day, the following proceedings were had, to wit:

*Bill.*

WILLIAM WYNN, Complainant,
*v.*
WILLIAM F. MORRIS AND KEZIAH TAYLOR, Defendants.

At this day came the defendants by Hubbard and Curran their solicitors, and file each their respective answers to the complainant's said bill of complaint.

Lafayette Circuit Court.

The separate answer of William F. Morris, one of the defendants to the bill of complaint of William Wynn, complainant. This defendant, reserving to himself all just cause of exception to the said bill of complaint, for answer thereto says:

He admits it to be true, that the said William Hemphill settled on what is now Lafayette County, south of Red River, in Fisher's Prairie. That said tract of country was not then surveyed, and that it might have been supposed that when the line should be run between these United States and the Republic of Texas, that said tract of country might be found to belong to Mexico, and that such line was run by the authority of both governments in 1840 or 1841, and said prairie was thereby found to be in the United States; and that in 1841 the said prairie was surveyed by the United States, and that the house in which the said William Hemphill resided, was thereby found to be on the southwest quarter of section 7, and the land which the said William cultivated and improved was in the northwest quarter of section 18, in township 16 south, of range 25 west of the 5th principal meridian. And this defendant further admits, that the said William Hemphill departed this life some time in the year 1824, or thereabouts, leaving two children, and the said Keziah, his widow, one of which said children has also departed this life; and that the said Keziah intermarried with one Thomas Jacobs, who died in the year 1828, or thereabouts, leaving the said Keziah, his widow, with one or more children, one of which now survives, and whose name, age, and place of residence this defendant does not know; and that during the marriage of the said Thomas and Keziah they lived in said house and cultivated said improvement, so built and made by the said William Hemphill; and so did the said Keziah, after the death of the said Thomas, reside in said house and cultivate said improvement until the fall of the year 1830 or 1831, when the said Keziah removed to the Republic of Mexico, but whether with an intention to reside there or return, this defendant does not know of his own knowledge, but admits she has always from that time resided in Texas.

And this defendant further says, it is not true that the said Keziah made a bargain or agreement with the said Alexander P. Bales, that he should collect and confine the horses, cattle, and other stock, belonging to the said Keziah, then running in the range, in order that the same might be driven to her intended place of residence in Texas, and that, as his compensation therefor, he should have the said improvement and settlement, with which the said Bales complied, by collecting and confining the said stock; but it is true, that the said Keziah did make an agreement and bargain with the said Alexander P. Bales, to collect her horses, cattle, and other stock, by her then

owned, and running in the range in and about said Fisher's Prairie, and to drive them to her intended residence in Texas, and, as a compensation therefor, the said Keziah was to give the said Alexander P. Bales one equal third part of all her said stock and the improvement and settlement on which she had theretofore resided upon, and cultivated in said Fisher's Prairie, but which said contract the said Alexander P. never did perform or fulfil on his part, and wholly neglected and refused to drive her said stock to her in pursuance of said agreement, which is the only contract or agreement made by the said Keziah with the said Alexander P. Bales in regard to driving said stock; and this defendant admits it to be true, that the said Alexander P. Bales took possession of said improvement, but not until the fall of the year 1830 or 1831, and sold the same to Morgan Cryer, who sold the same to Andrew Hemphill, who took possession thereof and resided thereon until 1835, when he sold the same to Samuel P. Carson, who took possession thereof and resided thereon, and cultivated the same until his death, and that Robert Hamilton, as the executor of the last will and testament of the said Samuel P. Carson, sold said improvement at public auction in 1839, in the month of April, and not in March, 1838, as complainant has alleged; and that at such sale Charles Carson was the purchaser thereof, and sold the same to Jacob Buzzard, who afterwards sold said improvement to said complainant, and put him in possession thereof, and executed to him a conveyance therefor, and that Exhibit "A" of complainant's bill is a copy thereof; nor does this defendant know, nor has he been informed, nor can he say, except from complainant's said bill, whether there is any written evidence of such sales other than complainant has alleged.

And this defendant further says, he admits it may be true, that complainant, from the time he so purchased said improvement from the said Jacob Buzzard, he has had the continuous possession thereof, and of the whole S. W. $\frac{1}{4}$ of Section 7, and has extended his improvement thereon, and has every year since cultivated a part of the same as part of his plantation.

This defendant further answering says, that he has been informed, and believes it to be true, that the said Keziah continued to reside on the said quarter section after the death of the said Thomas Jacobs, and did so reside thereon until the fall of the year 1830 or 1831; but whether the said Keziah cultivated any portion thereof even as a garden, this defendant cannot state from his own knowledge or the information of others.

And this defendant further says and admits, that the said Keziah removed to the Republic of Texas, and married one Taylor, who may have since died, but how long the said Keziah resided there without revisiting these United States this defendant does not know, nor has he been informed, nor can he state from his belief, save from complainant's said bill; but denies that the said Keziah, in December

1842, or at any time, returned to Arkansas by his solicitation, procurement, or knowledge, for the purpose of defrauding the said complainant, by proving up a pre-emption, as complainant in his said bill has alleged. And this defendant, further answering, says, that the said Keziah Taylor, then Keziah Jacobs, being a feme sole in the year 1829, resided upon the said S. W. ¼ of Section 7, and cultivated in cotton and corn, in her own right, about 20 acres in the N. W. ¼ of Section 18 in T. 16 S. of R. 25 west of the 5th principal meridian, and that the said Keziah cultivated the said northwest quarter of Section 18 in her own right and for her own use and benefit, and that she held and was in the actual possession of the said N. W. ¼ of Section 18, in her own right, on the 29th day of May, 1830, and that the said Keziah afterwards made proof of such cultivation and possession before the Register and Receiver at the Land Office at Washington, Arkansas, and to their satisfaction; and such proof being heard and fully considered by the said Register and Receiver at the Land Office aforesaid, the said Register and Receiver adjudged and awarded to the said Keziah a pre-emption right, for and to the said southwest quarter of Section 18, by virtue whereof the said Keziah purchased in her own right the said N. W. ¼ of Section 18, and obtained the Receiver's receipt for the same; and that the said Keziah, for a valuable consideration, assigned and delivered the said receipt to the defendant, by virtue whereof the defendant obtained a patent for the same from the United States, bearing date the 22d day of February, A. D. 1844, and now has and holds the same; and that the said complainant was informed that the said Keziah had come to this country, intending to prove her pre-emption to the said northwest quarter of Section 18, before the said Keziah proceeded to make proof thereof, and that after said pre-emption had been established and awarded to the said Keziah by the officers at said Land Office, and before this defendant purchased said certificate from the said Keziah as aforesaid, she offered to sell and dispose of the same to the said complainant for the moderate sum of four hundred dollars or thereabouts.

And this defendant, further answering, admits, that said section 18 lies along the whole southern line of said section seven, in the same township and range, but this defendant does not know of his own knowledge, nor can he admit the same, that the said John Cryer, in the year 1829, settled on the said N. W. ¼ of Section 18, and the N. E. ¼ of Section 18, and made an improvement thereon, which he sold to one Massack H. Jones, prior to the year 1829, who then settled thereon, and thereafter cultivated parts thereof; and that the said Cryer and Jones had laid a Mexican claim to a quarter of a league and lobar of land thereon, which included the whole of the said N. W. ¼ of Section 18, and about half of the N. E. ¼ of Section 16, and some of the south part of the southwest quarter of Section 7; that said Jones lived on and cultivated said improvement until 1833, and

sold the same to Doctor Jones, who resided on and cultivated the same until 1835, when he sold the same to complainant, but requires proof thereof; and this defendant insists that admitting all said matters and things by complainant alleged to be true, the same do not afford any matter of equity in behalf of said complainant, or furnish any basis whereon to found any relief to complainant against this defendant.

And this defendant further says, it is not true that long before the year 1829, to and until the present moment, every acre of the said northwest quarter of section 18 has been in the exclusive possession of said Cryer, James Jones, and complainant, as complainant in his said bill has alleged, but on the contrary thereof, the said Keziah was in the possession of and cultivated a portion of the said northwest quarter of section 18, in 1829, and was in the possession thereof, on the 29th May, 1830, as this defendant has above alleged.

And this defendant further admits, it may be true that said complainant, prior to the year 1841, and from thence hitherto and now, has the said northwest quarter of section 18 enclosed in his said plantation, but this defendant insists that thereby complainant acquires no equity, as against this defendant; and that this defendant admits, that in 1840 or in 1841, said lands were surveyed by authority of the United States, but by whom, this defendant does not know of his own knowledge; nor can he state from information, save by complainant's said bill, whether said northwest quarter of section 18 was included within complainant's enclosure, as was so stated in the field books, and so carried to the official plats of said township made out by the Surveyor-General of Arkansas, and furnished to the Register of the Land Office at Washington, and this defendant requires proof of the same, and insists that if the same were in all respects true, the complainant thereby has no ground for any equity or relief against this defendant.

And this defendant further answering says, it is not true that the said Keziah never had possession of or cultivated any portion of the said northwest quarter of section eighteen, as complainant in his said bill has alleged, but on the contrary thereof, the said Keziah cultivated a part of said N. W. ¼ of section 18, in 1829, and had and was in possession thereof, on the 29th day of May, 1830, as this defendant has above alleged; but it is true that the residence of the said Keziah and said husbands was on the said southwest quarter of section 7, but it is not true that the residence, cultivation, and improvement made by the said Keziah and her said husbands were exclusively in the said southwest quarter of section 7, as complainant has alleged.

And this defendant further answering says, that in regard to the said Act of Congress of the 4th September, 1841, and of the 19th March, 1843, and of the Acts of his Excellency, the Governor of Arkansas, thereunder, the appointment of said locating agents and

their acts, the instructions of his Excellency, the Governor of Arkansas, to said locating agents, and his letters to said agents, or either of them, and of Exhibits B 2, V X or V Z, he does not know of his own knowledge, nor can he state from information, save from complainant's bill, and requires proof of the same; but this defendant insists that in case all the matters and things in regard thereto were true, the same forms no ground of equity or relief in favor of complainant against this defendant.

And this defendant further says and insists, that by act of Congress, any land to which a valid pre-emption existed was reserved from sale, and that no appropriation of such lands could be lawfully made whilst such right of pre-emption existed; and this defendant does not know, nor has he been informed, save by complainant's said bill, whether any location or selection could be or had been made under the said supposed grant of 500,000 acres of land to the State of Arkansas, or what instructions were given by the Commissioner of the General Land Office to Registers of Land Offices, nor what information said Commissioner gave the Secretary of the Treasury, nor whether at the passage of said act of the 4th September, 1841, said northwest quarter of section 18 and S. W. ¼ of section 7, had been surveyed in accordance with law, and insists on strict proof thereof; but this defendant insists that in case the same were true, they form no ground of equity whereby said complainant can have any relief as against this defendant. And this defendant further insists, that from the said 29th day of May, A. D. 1830, the said Keziah had a valid pre-emption in and to the said northwest quarter of section 18, by reason of her possession and cultivation thereof, as above alleged, and that said N. W. quarter of section 18 was reserved from sale by reason thereof. And this defendant further answering says, that he does not know of his own knowledge, nor has he been informed, nor can he state, save from complainant's said bill, what locations were made by the said Charles E. Moore, at the solicitation of said complainant, by agreement with the said Governor of Arkansas, nor whether the said northeast ¼ of section 18, and the south half of section 7, and other adjoining lands were liable to location by act of Congress, nor whether said Moore made any list of lands by him located and selected, and notified such Register at Washington thereof, nor whether said Governor gave information thereof to the Commissioner of the General Land Office, of any locations and selections so alleged to be made by said Charles E. Moore, nor whether said Governor sent a copy thereof to the Register at Washington, Arkansas, as complainant in his said bill has alleged, and requires strict proof thereof; but this defendant insists that in case all which were true, the same forms no ground of equity for said complainant on which to found any relief, as against this defendant.

And this defendant further answering saith, he does not know of his own knowledge, nor has he been informed, save by complainants,

said bill, whether the said Commissioner of the General Land Office, on the 2d day of May, 1842, or at any other time, addressed any circular letter to the Registers of all Land Offices in the United States, and among others to the Register at Washington, Arkansas, by whom the same is alleged to have been received, thereby prescribing and defining the duties in regard to the location and selection of lands, by virtue of said Act of Congress in regard to the said 500,000 acres of land, nor what instructing and directing were given to selecting agents, nor how or in what time they should report such selections, nor how they should note the same in the books of the office, nor how they should keep lists thereof filed in their offices, nor how they should transmit copies thereof to the General Land Office, nor whether selections should be recorded, as of the day when made, or for what purpose, as complainant in his said bill has alleged, and this defendant requires strict proof thereof, and insists that in case the same were true, as complainant has alleged, complainant has not thereby any equity on which to found any relief, as against this defendant,

And this defendant further answering says, that he does not know of his own knowledge, nor has he been informed, save by complainant's said bill, whether, before the receipt of said circular, and the opinions of said Commissioner in response to a letter of said Governor of Arkansas thereunto attached, showing that the title to said State to the lands selected, became absolute from the day of selection, nor whether the said Governor, by letter of date the 23d May, 1842, informed said locating agents, and among them the said Charles E. Moore, that they could make their selections, and report them directly to the Register of the district in which the land selected lay, and required them still to forward to the Executive Department of the State a copy of such selections, as required by former instructions, and particularly requiring them not to fail to note in their lists the particular day when each selection was made, as complainant, in his said bill of complaint, has alleged; and this defendant insists on strict proof of the same, and that in case the same were true, the said complainant has not, by reason thereof, any equity whereby he is entitled to any relief as against this defendant.

And this defendant further answering says, he does not know of his own knowledge, nor has he been informed, save by complainant's said bill, whether the said Charles E. Moore forwarded to said Governor a list of all the lands by him selected as such agent, noting the time and date of each location, and among them the said northwest quarter of section 18, as having been located and selected by him as a part of said 500,000, on the 16th day of May, 1842, and said south half of section 7, on the 28th day of April, 1842, which report and list was duly certified by him, and a copy thereof sent to said Register at Washington, on the 8th day of June, A. D. 1842, to be recorded and forwarded to the General Land Office, in pursu-

ance of the instructions of said circular, as complainant, in said bill, has alleged, and requires strict proof thereof; and this defendant insists that in case the same were true, the said complainant has not any equity thereby, by reason whereof he is entitled to any relief, as against this defendant. And this defendant further answering insists, that the said N. W. ¼ of section 18, by reason of anything matter in complainant's said bill alleged, did not, on the said 16th day of May, 1842, or at any other time, cease to be public lands of the United States, and the title thereto vest in the State of Arkansas, as a trustee for said complainant, with whose assent, and at whose request, and for whose use and benefit the same had been located, under said supposed agreement with said Governor, and that said State was bound to convey the same to him on the payment of such price as should be thereafter prescribed by the Legislature, in manner and form as complainant in his said bill has alleged. And this defendant further answering says, that the said Keziah, on the day of December, 1842, returned to the State of Arkansas; but this defendant says it is not true, as complainant in his said bill has alleged, that said Keziah returned by the procurement or at the instance of this defendant; for the said Keziah came to the State of Arkansas without the knowledge, instance, or solicitation of this defendant. And this defendant further denies and insists that the said Keziah, by reason of anything in complainant's said bill alleged, had expatriated herself from the Government of the United, and forfeited her rights under the same; but whether the said Keziah had become a citizen of the then Republic of Texas, and owed allegiance thereto, does not know of his own knowledge, nor has he been informed, save by complainant's said bill, and requires strict proof of the same; but this defendant insists that if the said Keziah had become a citizen of and owed allegiance to the Republic of Texas, said complainant, by reason thereof, has no equity or ground of relief thereby as against this defendant.

And this defendant further says, it may be true that the said Keziah resided twelve years in the said Republic of Texas, and was continually absent therein as complainant has alleged, but this he does not know of his own knowledge, and requires proof of the same; but this defendant denies that the said Keziah abandoned or intended to abandon her said improvement and pre-emption right; and this defendant further says, that the said Keziah, when she returned to the State of Arkansas, she found the land on which she had cultivated cotton and corn in 1829, and of which she had possession on the 29th May, 1830, was on the said N. W. ¼ of sec. 18, and within the enclosure and constituting a portion of the plantation of said complainant; and this defendant avers and knew that the said improvement on which she had cultivated corn and cotton in 1829, and of which she had and held possession on the said 29th day of May, 1830, as above alleged, was on the said northwest quarter of section 18;

and this defendant admits that the said Keziah filed in the Land Office at Washington her application for a pre-emption right, to and for the entry of the said northwest quarter of section 18, and did by her affidavit in due form proceed to make proof thereof, and that her said affidavit was not false by intention or mistake, but true in substance and in fact, and that there was neither culpable or criminal negligence or carelessness in the same; and the said Keziah, in regard thereto, did depose and swear, as in truth she might, and this defendant avers it to be true as above alleged, that the said Keziah was in possession of a portion of the said northwest quarter of section 18, on the 29th day of May, 1830, and cultivated thereon in corn and cotton in the year 1829, about 20 acres, and not one word of which, the said affidavit, was false, and that she did procure the affidavits of George Dooley and John Waggoner to the same facts, and that the said George Dooley and John Waggoner were not under any mistake as to the facts and numbers of the land to which they deposed, and of which the said Keziah was in possession on the said 29th day of May, 1830, and which she cultivated in 1829, as above alleged, but well knew the same; and this defendant further answering says, he is informed that the evidence taken in regard to said pre-emption, was taken *ex parte*, and so admits the facts to be, but avers the same was done in pursuance of law and the practice of the land officers, in regard to such matters. But this defendant denies that the said Register and Receiver at Washington were deceived or ignorant that the said Keziah had been for years, and then was, a resident of the Republic of Texas; and this defendant denies that the said Keziah had ever abandoned her said improvement and the intention to avail herself of the benefit of her pre-emption right thereto, or that she had lost her right or the benefit of any pre-emption right she might have had to the said northwest quarter of section 18; and said defendant avers that said pre-emption right to the said N. W. ¼ of sec. 18, was rightfully granted to the said Keziah by the said Register and Receiver, as by law they were bound to do; and this defendant admits that the said Keziah after the probate of her said pre-emption right, returned to Texas, as complainant has alleged, and from thence hitherto has and now resides there, as this defendant is informed and believes; but this defendant denies that he was the active agent in proving up the said pre-emption, and most positive denies that he purchased the same, or had, or held, or pretended to have or hold, any right or interest in or to the same before the probate and allowance thereof. And this defendant denies that he has applied in the name of the said Keziah to enter the said N. W. ¼ of sec. 18, or that he paid $200, or any other sum of money for her use, but that such entry at the time was made with the money, and for the use of the said Keziah; and this defendant denies that such pre-emption was false, or in any manner fraudulent, or the entry thereof. And this defendant further answering says, that

after the said certificate of entry had been issued to and in the name of the said Keziah, the same, in consideration of the sum of $600, was duly assigned and delivered to this defendant by the said Keziah and he admits that there was issued to her a patent thereon, in manner and form as this defendant has above alleged. And this defendant further answering says, that he did not assist in proving up said pre-emption, further than the common offices of friendship. That at the time of the probate thereof, this defendant had no interest therein, and did not at that time expect to have; that if anything he did in relation thereto, the same was gratuitous; and this defendant denies that at the time of the probate of said pre-emption, he knew or believed that said pre-emption was false; nor does this defendant now know or believe the same to be false. And this defendant further says, that he does not know of his own knowledge, but has been informed and believes it to be true, that the said Keziah did cultivate a portion of the said N. W. $\frac{1}{4}$ of section 18, as this defendant has above alleged. And this defendant further denies that he knew that the whole of the said northwest quarter of section 18, previous to 1841, and long before, had been enclosed in complainant's field, or that the said Keziah committed a fraud, by proving up said pre-emption; and this defendant denies that the said Keziah abandoned her said improvement in 1830, as he knows or believes; but this defendant admits that said Keziah removed to Texas, and remained there for some years, but how long this defendant cannot state; but whether the said Keziah claimed citizenship there this defendant does not know, but supposes she did; but whether the said Keziah intended to return to the United States, this defendant does not know; but this defendant has been informed, and believes it to be true, that after the said Keziah, in 1830 or 1831, left her said improvement, the said Alexander P. Bales took possession thereof, and fraudulently held and disposed of the same, without the knowledge or consent of the said Keziah; and that under the said fraudulent sale, and disposition thereof, by the said Alexander P. Bales, and the several transfers above alleged by complainant, said improvement, or the land on which the land was situated, came to the possession of said complainant, previous to 1840.

And this defendant further answering says, he does not know, nor has been informed, save by complainant's said bill, whether, in consequence of the establishment of the said pre-emption right of the said Keziah, and its allowance by said land officers, and the entry of said quarter section thereunder, the said entry and selection of said tract under said grant by said State, was utterly disregarded and held by the General Land Office to be nullified, and complainant thereby prevented from carrying out his said contract with said Governor; nor whether, by virtue and operation of the two said Acts of Assembly, had become a positive and irrevocable contract, as of the said 28th day of April and said 16th day of May, that said State had

entered said land for complainant, and then as trustee to convey to him and other lands to him upon his paying or securing the price thereof prescribed by said acts, for 320 acres $640, and for the residue five dollars per acre, although said complainant was ready and willing to carry out his said contract, and was prepared to do so immediately upon learning that he was allowed to do it, and on what terms; but before the law was passed, which authorized him to purchase, and fixed the terms of purchase, said pre-emption of said Keziah was proven up, and the power of the State to sell was gone, and the Courts of the United States was closed to complainant for want of jurisdiction, and the title having passed from the United States, and such selections having been abandoned by said State, and other selections made instead thereof, instead of her adhering to said selections, and protecting said complainant, as she should have done, nothing was left for complainant but to appeal to the Equity powers of this Honorable Court, as complainant in his said bill has alleged, and requires proof thereof; but this defendant insists, that in case the same were true, the complainant has not, by reason of anything thereby alleged, any equity whereon to found any relief, as against this defendant.

And this defendant further answering says, that he does not know of his own knowledge, nor has he been informed, save by complainant's said bill, whether the said Charles E. Moore located for said complainant, on the 28th day of April, 1842, the said S. W. $\frac{1}{4}$ of Section 7, which location was also registered by the Commissioner of the General Land Office, and the same located on the 26th of January, 1846, by Henry Cheatham, and by said Cheatham sold and assigned to said complainant on the 27th November, 1848, who executed therefor his bond to said State, as complainant in his said bill has alleged, and this defendant requires proof of the same, and insists that complainant, by reason of anything thereby or therein alleged, has not any equity whereon to found any relief as against this defendant. This defendant, further answering, says, that the said complainant, before the probate of the said pre-emption to the said northwest quarter of section 18, on the allowance thereof to the said Keziah, was confirmed, and had notice that the said Keziah had come to the country with an intention to make proof of and establish her right thereto, and was requested to purchase the claim of the said Keziah, and let the same be established for his use; to which said complainant then refused to, and used violent and harsh language in regard to the said Keziah and her said claim; and this defendant avers, that if complainant did not know the time when the probate of said pre-emption right was made, it was owing to the wilful negligence of said complainant, and not from any act done, or intention by said Keziah, or any other person, to conceal the facts from said complainant.

And this defendant, further answering, says, that said Keziah, im-

mediately after the probate of said pre-emption, and the entry thereof by the said Keziah, and the grant of the Receiver's receipt to her for the same, and before the sale of the same to this defendant, the said Keziah offered to sell said northwest quarter of section 18 to the said complainant, for the moderate sum of six hundred dollars or thereabouts, and that complainant refused to purchase the same; and this defendant further says, that said complainant protested against the claim of the said Keziah, and the allowance of the said pre-emption to her, and made such protest to the Commissioner of the General Land Office, and therein stated by postscript that the Register and Receiver concurred with him in such protest, whereas, in truth and in fact, they did not concur with him therein. And this defendant further says, that complainant, in his said protest, which bears date the 24th day of December, 1842, charged and alleged that he had then just been informed that the said Keziah Taylor, a resident of Texas, had appeared before the Register and Receiver of the Land Office at Washington, Arkansas, and made oath that she was the owner of an improvement on the public lands of the United States (to wit), on the northwest quarter of section 18, T. 16 S. of range 25 west, south of Red River, in the district of land subject to sale at Washington, Arkansas, which she cultivated in the year 1829; that she had under fence about 20 acres in corn and cotton; that he had made inquiry concerning the claim of the said Keziah Taylor, who had been from the United States ten or twelve years, and that he was informed by Alexander P. Bales, who then resided in the County of Lafayette, and State of Arkansas, that he purchased said improvement of said Keziah Taylor previous to her leaving the United States; that said Bales had since transferred the same to a certain Morgan Cryer, and Cryer sold to a certain Andrew Hemphill, and Hemphill sold to Samuel P. Carson, of N. Carolina; and since the death of said Carson (to W. A.), 1839, the same was sold at public auction, by Robert Hamilton, executor of said Carson; that under that sale he (complainant) had come to the possession of the same, and had improved and cultivated the entire quarter section ever since; that he was still cultivating and improving the same; that he had never, until within a few days, heard of any other claim, and that he (complainant) had been informed, that the said Keziah Taylor left the United States of America immediately after filing her affidavit in the Land Office at Washington, Arkansas; that she had no agent known to complainant in the United States; and, being the purchaser at public sale, no prior claim being set up by any person whatever, having paid a fair price in cash and greatly improved the same, he asked in justice that all proceedings might be suspended in that matter until the facts could be fully established, that a patent might be granted to whom it is due; and that said complainant, in and by his said protest, at the conclusion thereof, requested of the Commissioner to be informed how to proceed, so as to obtain the affidavit of the said Alexander P. Bales,

and to show that the said Keziah Taylor sold before she left for Texas, in the spring of 1830.

And this defendant further answering says, that the Register and Receiver at Washington, Arkansas, was instructed by the Commissioner of the General Land Office to examine into the facts alleged in complainant's said protest, and into the claim of said complainant, and transmit the evidence in regard thereto to the General Land Office, together with their opinions thereon; and this defendant avers, that said Register and Receiver, at the instance of the said complainant, did examine into the facts alleged by said complainant in his said protest, and by agreement and consent of complainant and this defendant, the depositions of Morgan Cryer, Alexander P. Bales, and James Abraham, were taken, the said complainant and this defendant being present, at the time and place of taking the same, and had full knowledge thereof, and that such depositions so taken were returned to the Register and Receiver at Washington aforesaid, and the said Register and Receiver made their opinion in writing thereon, in pursuance of the said instruction of the Commissioner, so by them received as aforesaid, and certified said depositions, together with their said opinion, to the said Commissioner of the General Land Office; and such proceedings were thereupon had before the Commissioner of the said General Land Office, that the opinion and judgment of the said Register and Receiver at Washington, granting and allowing the said pre-emption to the said Keziah to the said N. W. quarter of section 18, was approved and in all things affirmed by said Commissioner, and a patent directed to issue to this defendant on the certificate so granted to the said Keziah as aforesaid, as by a transcript of the said protest of the said complainant, the letter of instruction to the said Register and Receiver from the Commissioner of the General Land Office, the depositions of the said Morgan Cryer, Alexander P. Bales, and James Abraham, and the letter of advice from the said Commissioner of the General Land Office, advising that the grant and allowance of the said pre-emption to the said Keziah Taylor, by them at their office, had been by him affirmed in all things, and that said Register and Receiver, in pursuance of instruction in regard thereto from the Commissioner of the General Land Office, gave notice to the said complainant, that the said pre-emption of the said Keziah Taylor, and her certificate of the entry thereof, No. 4615, had been put on file for patenting, and that said complainant received such notice from said Register and Receiver, now on file in the office of the said Commissioner of the General Land Office, will more fully and at large appear a duly certified transcript, all which, under the seal of the said General Land Office, will be hereafter herewith filed, and prayed to be taken as part of this defendant's answer, and marked Exhibit (A, 1).

And this defendant further answering says, that it was agreed and

understood between complainant and this defendant, that the final decision and opinion of the said Land Officers on the protest of complainant, and the evidence taken thereon, should be final and conclusive between your orator and the said Keziah and said complainant, in regard to said pre-emption right of the said Keziah, and that complainant would not further litigate the same. And this defendant denies that there was any fraud, accident, or mistake, or any false swearing by mistake, want of information, or otherwise, in the probate of the said pre-emption right to the said N. W. ¼ of section 18, by the said Keziah, or the said George Dooly, or John Waggoner, or either of them. And this defendant insists that the final decision and opinions of the said Register and Receiver, and the said Commissioner of the General Land Office, was and is final and conclusive, against the said complainant, and a bar to his present bill, and all the pretended equities therein alleged. And this defendant further answering says, that complainant in and by his said bill has not made or stated such a case as entitles him to any such relief as by his said bill he has prayed, from and against this defendant, and he prays that on the final hearing of said bill he may have the same advantages that he could have had by a demurrer in due form. And this defendant further prays, that upon the final hearing of said bill he may have the same advantages of all matters by him above alleged, which go in bar of the relief complainant has prayed in and by his said bill, as if the same had been pleaded in due form; and as to the new matter incorporated into this his answer, this defendant prays that the said complainant may, on his corporal oath, true and perfect answer make to the interrogatories hereafter enumerated and mentioned, from one to eight, as by the note hereunder written he is required to do. And this defendant denies all unlawful combination and confederacy with which he is charged, in and by said bill. Without this, that there is any other matter, cause or thing, in complainant's said bill contained, material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge or belief of this defendant; all which matters and things this defendant is ready and willing to aver, maintain, and prove, as this honorable Court shall direct, and humbly prays that the injunction granted above may be dissolved, and he be herein dismissed, with his reasonable costs and charges in that behalf most wrongfully sustained, &c.

WATKINS, & CURRAN, & HUBBARD,
Solicitors.

*Note.*—This defendant, William F. Morris, requires that said complainant, William Wynn, should answer the following interrogatories, numbered from 1 to 8, predicated on the new matter introduced in his above answer to complainant's said bill.

First. Whether he, the said William Wynn, had not been informed

and did not know that the said Keziah Taylor had come to the country intending to prove up a pre-emption right to land then in the possession and cultivated by complainant, before the said Keziah proceeded to prove up her pre-emption right to the said northwest quarter of section 18.

Second. And whether he, complainant, was not requested to purchase the claim of the said Keziah, before she proceeded to make proof of her right to the said northwest quarter of section 18.

Third. And whether this defendant, William F. Morris, did not inform him, complainant, that the said Keziah had come to the country intending to prove a pre-emption right to land then in his possession, and which he then had in cultivation, before the said Keziah made any proof in regard to said N. W. $\frac{1}{4}$ of section 18.

Fourth. And whether the said Keziah did not offer to sell to him, the said complainant, the said northwest quarter of section 18, after she had proved up her pre-emption right thereto, and entered the same, and had the Receiver's receipt therefor, and before she left the State of Arkansas.

Fifth. And whether he, complainant, did not make his protest to the Commissioner of the General Land Office against the issuance of a patent to said Keziah, upon her entry of the said northwest quarter of section 18, under her said pre-emption right.

Sixth. And whether he did not request the Commissioner of the General Land Office to inform him how he might proceed to take the affidavit of the said Alexander P. Bales, to show that the said Keziah sold her right to her improvement before she left the United States, in 1830.

Seventh. And whether he, complainant, did not, by the direction of the Commissioner of the General Land Office, and by instruction from him to the Register and Receiver at Washington, proceed to and take the depositions of Morgan Cryer, Alexander P. Bales, and James Abrahams, in regard to the matters of his said protest.

Eighth. And whether he, complainant, did not agree with this defendant, William F. Morris, that the opinions and decisions of the Land Officer, in regard to his said protest, should be final and conclusive between him, said complainant, and this defendant, and that there should be no further litigation about the said northwest quarter of section eighteen.

WATKINS, & CURRAN, & HUBBARD,
Solicitors.

State of Arkansas, Lafayette County, *sct.*

Lafayette Circuit Court, October Term, A. D. 1850.

William F. Morris, sworn, deposes and says, that he has had his written answer read, and is informed of the same, and that the mat-

ters of fact therein stated as of his own knowledge, are true, and when stated from information of others, he believes them to be true.

W. F. MORRIS.

Sworn to and subscribed in open Court, this 29th day of October, A. D. 1850.

A. BYRNE,
Clerk.

Filed October 29th, 1850.

A. BYRNE,
Clerk.

The Exhibit A 1, referred to in the foregoing answer of the said Morris, appears, in the words and figures following, to wit:

State of Arkansas, County of Hempstead.

Be it remembered, that on this, the 9th day of December, in the year of our Lord 1842, personally appeared Keziah Taylor, in the presence of the Register and Receiver of the Land Office at Washington, Arkansas, and on her oath deposeth and sayeth, that she was the owner of an improvement on the public lands of the United States, to wit: on the N. W. ¼ of section 18, T. 16 S, of R. 25 west, south of Red River, in the district of land subject to sale at Washington, Arkansas, which she cultivated in the year A. D. 1829; that she had under fence and in cultivation, on said quarter section, about twenty acres in cotton and corn *cotton;* that her dwelling-house was on an adjoining quarter section, to wit, on the southwest quarter of section 7, in same township and range; that she had possession thereof on the 29th day of May, 1830; and further, she says not.

her
KEZIAH X TAYLOR.
mark.

Sworn to before me, this, the 9th day of December, 1842.

D. T. WITTER,
Rec'r.

At the same time, place, and before me, as aforesaid, personally appeared George Dooley and John Waggoner, and after being duly sworn, deposeth and says, they are personally well acquainted with Keziah Taylor, who subscribed the foregoing affidavit; that they know all the material facts, as set forth in her affidavit, are true, in substance and in fact, and further they say not.

GEORGE DOOLEY,
JOHN WAGGONER.

Sworn to before me, the 9th December, 1842.

D. T. WITTER,
Rec'r Pub. Mon. Washington, Ark's.

LAND OFFICE, WASHINGTON, ARK'S,
9th December, 1842.

We, the undersigned Register and Receiver of the Land Office, at Washington, Arkansas, hereby certify, that we are well acquainted with John Waggoner and George Dooley, who subscribed the foregoing affidavit, and that they are respectable citizens, and worthy of credit.

SAMUEL C. WHEAT,
Register.

D. T. WITTER,
Receiver.

No. 4516. Land Office at Washington, Arkansas, 9th December, 1842. It is hereby certified, that in pursuance of law, Keziah Taylor, Lafayette County, State of Arkansas, on this day purchased of the Register, at this office, the lot on northwest quarter of section No. 18, in township No. 16 south, of Range No. 25 west, containing $157\frac{11}{100}$ acres, at the rate of one dollar and twenty-five cents per acre, amounting to one hundred and ninety-six dollars and thirty-nine cents, for which the said Keziah Taylor has made payment in full, as required by law.

Now, therefore, be it known, that on presentation of this certificate to the Commissioner of the General Land Office, the said Keziah Taylor shall be entitled to receive a patent for the lot above described.

SAMUEL C. WHEAT,
Register.

Pre-emption Act, 1830.

No. 4615. Receiver's Office, at Washington, Arkansas, December 9th, 1842. Received of Keziah Taylor, of Lafayette County, Arkansas, the sum of one hundred and ninety-six dollars and thirty-nine cents, being in full for the N. W. full quarter of sec. No. 18, in township No. 16 south, of Range No. 25, containing one hundred and fifty-seven acres and eleven hundredths, at $1 25 per acre.

D. T. WITTER,
Receiver.

$196 39. Pre-emption Act, 1830.

STATE OF ARKANSAS, LAFAYETTE COUNTY, RED RIVER,
December 4th, 1842.

Dear Sir: I am under the disagreeable necessity of calling your attention to a subject of vital importance to me. I have just been informed that Keziah Taylor, a resident of Texas, hath appeared before the Register and Receiver at the Land Office at Washington, Arkansas, and made oath that she was the owner of an improvement on the public lands of the United States, to wit, on the N. W. $\frac{1}{4}$ of section 18, T. 16 S. of R. 25 west, south of Red River, in the district of lands subject to sale at Washington, Arkansas, which she

cultivated in the year 1829; that she had under fence about twenty acres in corn and cotton. I have made some inquiry concerning the claim of Keziah Taylor, who has been absent from the United States ten or twelve years, and I am informed by Alexander P. Bales, who is now residing in the County of Lafayette, and State of Arkansas, that he purchased the said improvement of Keziah Taylor, previous to her leaving the United States; that said Bales since transferred the same to a certain Morgan Cryer, and Cryer sold to a certain Andrew Hemphill, and Hemphill sold to Samuel T. Carson, of North Carolina, and since the death of said Carson, (to wit) 1839, the same was sold at public auction by Robert Hamilton, Esq., of said Carson; that under that sale I have come to the possession of the same, and have improved and cultivated the entire quarter section ever since that. I am still cultivating and improving the same, and that I never, until within a few days, heard of any other claim, and that I am informed that the said Keziah Taylor left the United States of America immediately after filing her affidavit in the Land Office at Washington, Arkansas; that she has no agent known by me in the United States, and being the purchaser at public sale no prior claim being set up by any person whatever, having paid a fair price in cash, and greatly improved the same, I ask, in justice, that all proceedings will be suspended in this matter until the facts are fully established, that a patent may be granted to whom it is due. I will be thankful, if you will be so kind as to inform me how to proceed so as to take the affidavits of A. P. Bales, &c., to show that Keziah Taylor sold before she left for Texas, in the spring of 1830. This is an aggravated case, and I desire to have it set right. Please direct your instructions to Lewisville, Arkansas, the county seat of Lafayette, and you will much oblige me.

Your most obedient servant,

WILLIAM WYNN.

P. S.—The Register and Receiver concur with me in the protest against the above claim, having no power left them.

(Indorsed on the foregoing the following direction): To Thomas H. Blake, Esq., Commissioner of the General Land Office, Washington City, D. C.

GENERAL LAND OFFICE, 1843.
January 19th, 1848.

Sir: Your letter of the 24th ult., in relation to the claim of Keziah Taylor, to the N. W. ¼ 18, T. 16, R. 25 W., south of Red River, Arkansas, has been received. Instructions have this day been given to the land officers at Washington, Arkansas, in relation to the matter, which will enable you to produce the evidence of the facts alleged by you to exist adverse to the merit of that claims, and in favor of your claim to the same land. When this is received at this

office a decision will be made in accordance with those facts and the law.

Respectfully, your obedient servant,

THOMAS H. BLAKE,
Commissioner.

Mr. WILLIAM WYNN,
Lewisville, Lafayette County, Arkansas.

GENERAL LAND OFFICE, 1843.
January 19th, 1848.

Gentlemen: A communication has been received from William Wynn, stating that Keziah Taylor, a resident of Texas, has appeared at your office to prove a pre-emption right to N. W. ¼ 18, T. 16 S., R. 25 W., south of Red River, by reason of cultivation thereon, in 1829, to the amount of 20 acres, &c. He alleges that she has been absent from the United States some ten or twelve years, having sold, previous to her leaving, the improvement made to another person, he, Wynn, deriving his possession through a purchase made of an individual into whose hands the land fell after repeated sales, under authority of that originally made as above-mentioned by Keziah Taylor; that he has the entire quarter section in cultivation, and has had since 1839, and never knew of any claim of said Taylor, until within a short time, when he heard of the filing of her affidavit, and of her immediately thereafter leaving the United States. You will examine into these facts, and into the claim on the part of Mr. Wynn, and transmit the evidence to this office, with your opinion thereon, as it would seem from the statements made that a great wrong was about to be inflicted on him by or through a person who, if she ever had any claim, had sold the same and yielded possession by abandonment of the premises more than 10 years.

Respectfully, your ob't serv't,

THOS. H. BLAKE,
Comm'r.

Register and Receiver, Washington, Ark's.

LAND OFFICE, WASHINGTON, ARKANSAS,
September 12th, 1843.

Sir: Accompanying this communication you will receive certain papers marked A, B, C, D, & E, relating to the pre-emption case of Mrs. Keziah Taylor, No. 4615. The parties, as I understand, are satisfied to submit their respective claims for final determination upon the evidence now submitted, embracing, as they believe, all the facts of the case.

The undersigned, in presenting this matter anew, would here barely remark, that they consider that the right of pre-emption vested fully and absolutely at the passage of the act of Congress, to wit, on the 29th day of May, 1830, and the only facts for the Register and Receiver to inquire into, were simply these: Did the claimant cultivate the land in question in the year 1829, and had the possession thereof, on the 29th day of May, 1830.

These facts being established affirmatively, this office could not, in the opinion of the undersigned, gainsay or resist the right, and any act of sale, removal, or abandonment, could not be inquired into, or their consequences determined before a subordinate branch of an executive department.

As the rights of the party stood at the passage of the act, so they must remain until they have been impaired by the neglect of the claimant to appear within the proper time and make proof and entry according to law, and such rules and regulations as shall be prescribed by the Commissioner, &c.

The legal consequences of sales and transfers made, subsequent to the date of the passage of the pre-emption act, are, in the opinion of the undersigned, matters of private contract, to be determined and enforced by the judicial tribunals of the country, where the parties can have compulsory processes to bring witnesses before them, and matters of fact may, if desired by either parties, be inquired of by jury.

These powers and duties do not, in the opinion of the undersigned, appertain to the Register and Receiver of Land Offices.

We are, therefore, of the opinion, that from the law and the evidence in this case, that the party aggrieved should seek his remedy elsewhere, and not through this office.

Very respectfully, your ob't serv't,

SAM'L C. WHEAT,
Register.

D. T. WITTER,
Receiver.

THOS. H. BLAKE, ESQ.
Com. Gen. Land Office, Washington City.

*A.*

The State of Arkansas, Lafayette County.

Personally appeared before me, Lewis B. Fort, an acting Justice of the Peace, in and for the County aforesaid, Morgan Cryer, witness for Keziah Taylor, in a case wherein the northwest quarter of sec. 18, T. 16 S., of R. 25 W., lying and being situate in the County and State aforesaid, is in litigation or dispute between said Keziah Taylor and William Wynn, the said Keziah Taylor having proven up and paid out a pre-emption to said above-described land, at the Land Office at Washington, in the County of Hempstead, and the State aforesaid; and the same being protested by said William, and a patent sought to be prohibited from (by said William Wynn), the General Government to said Keziah Taylor, said witness, a citizen of the County aforesaid, appearing and being examined by the consent of the parties aforesaid, and deposeth and saith, after having been by me duly sworn to.

Interrogatory First. At what time was the possession of said above-described land (if ever) in the possession of said Keziah, and how long was the continuance of the same?

Answer. Said Keziah and her husband settled on said land in 1821, or thereabouts, by clearing and cultivating about 15 or 20 acres of the same, their residence being on a different quarter, and continued in the possession of the same until the fall of 1830.

Interrogatory Second. What was the motive of their getting possession of the same (in person) of said Keziah, as you understood from her at time of leaving, and after leaving was any disposition made of the same, and what?

Answer to Interrogatory Second. During the residence of said Keziah upon the land aforesaid, her husband died, and she went to her brother's in Texas. Said land and stock thereon was left in the possession of one Alexander P. Bales, in what capacity deponent don't know.

Interrogatory Third. What were the circumstances of said Keziah at the time of leaving, and how long after leaving until she returned, and when, if ever?

Answer to Interrogatory Third. Said Keziah was in needy circumstances when she left for her brother's, and returned to the country aforesaid during the fall of 1842.

Interrogatory Fourth. After her, said Keziah's, return, what were her acts in regard to said land, as regards possession?

Answer to Interrogatory Fourth. Upon her return, said William Wynn was in the possession of the land aforesaid, and said Keziah merely went upon the same, to examine the corners and boundaries.

Interrogatory Fifth. What disposition did said Alexander P. Bales make of said land, after being placed in the possession of the same?

Answer to Fifth Interrogatory. Said Bales, after keeping possession for six or seven months, sold the same to me, deponent.

Sixth. What was the nature of the sale by Bales to you?

Answer to Interrogatory Sixth. Said Bales, about the time of the sale to me, observed he had been at great trouble about taking care of the stock, mentioned by deponent, in a previous answer, as left by said Keziah upon her departure for Texas, and being her property, or claimed by her, and if I or her (said Keziah's) brother would pay him for the trouble aforesaid, he would give me possession of the said tract of land; and deponent further states that he only purchased possession, and not the property in said land.

Interrogatory Seventh. What disposition was made by you (deponent) of said land or possession of the same?

Answer to Interrogatory Seventh. Deponent sold possession of same in the fall of 1833, to one Andrew Hemphill.

Interrogatory Eighth. What was the motive of said Keziah in coming again into the country aforesaid, as you understood from her at the time of her arrival, or thereabouts?

Answer to Interrogatory Eighth. Said Keziah, as ascertained from her at her arrival, was to avail herself of the pre-emption laws, and prove her pre-emption to the land in dispute as afore-mentioned, being her first opportunity of availing herself of the benefit of the same.

Interrogatory Ninth. How long before said Keziah returned from her brother's, as before mentioned, did said William Wynn have possession of the land aforesaid, and how much of the same was in cultivation by him?

Answer to Interrogatory Ninth. Said Wynn had possession before her arrival as aforesaid five or six years, and had the whole of it in cultivation, to best of deponent's belief; and deponent further saith not. Sworn to and subscribed before me, this 8th day of May, 1843.

M. CRYER.

LEWIS B. FORT,
J. P.

(Indorsed on the foregoing affidavit as follows:)

Deposition of M. Cryer, in support of Keziah Taylor's pre-emption claim.

Filed the 11th May, 1843, in my office.

D. T. WITTER,
Receiver.

*B.*

State of Arkansas, Lafayette County.

Personally appeared before me, Richard H. Finn, an acting Justice of the Peace, in and for the County and State aforesaid, Alexander Bales, a witness for Keziah Taylor, in a litigated case, wherein the N. W. $\frac{1}{4}$ of section T. 16, R. 25 W., situated in the County and State aforesaid, to which said tract of land above described said Keziah Taylor proved up and paid out a pre-emption at the Land Office at Washington District, Arkansas, to which William Wynn has filed his protest at the proper office, to prevent said Keziah from obtaining from the General Government a patent for the same. Said witness, a citizen of the County and State aforesaid, after having been by me duly sworn, deposeth and saith:

Interrogatory First. Was ever any contract between you and said Keziah Taylor in regard to said above-described tract of land? If so, state the nature of it, and when made.

Answer. At some period in 1829, said Keziah was about to go to Texas, and by a parol contract entered into about that time, agreed to let me have her interest in said above tract of land, which interest was a dwelling-house and some little improvements, and one-third of the cattle which she had, in consideration that I would drive the residue of her cattle to Texas; some time afterwards an attachment was levied upon said cattle, therefore I could not perform my part

of the agreement; but in order to remunerate myself for what trouble I had been at, I felt myself authorized to retain interest in the land until paid for my service; and I thereupon agreed with one Morgan Cryer, some six or twelve months thereafter, to give up all the claim I had in said tract of land, if he would pay me for my labor in taking care of said cattle, which I estimated at $40, which he paid me. And further deponent saith not.

A. P. BALES.

The above deposition was taken before me, Richard H. Finn, an acting Justice of the Peace, for the County and State aforesaid, by consent of parties; and sworn to and subscribed this the 8th day of August, 1843.

RICHARD H. FINN,
J. P.

*C.*

State of Arkansas. Lafayette County.

Personally appeared before me, Richard H. Finn, an acting Justice of the Peace, in and for the County aforesaid, James Abrahams, a witness in a litigated case, where the N. W. ¼ of section 18, T. 16, R. 25 west, situate in the County and State of Arkansas, between Keziah Taylor, of the Republic of Texas, and William Wynn, of the United of America; the said Keziah Taylor having been abroad, to prove and pay out a pre-emption to the above-described lands at the Land Office, at Washington District, Arkansas, to which William Wynn has filed his protest at the proper Land Office, to prevent the said Keziah Taylor from obtaining from the General Government of the United States of America a patent for the said lands as described above. Said witness is a citizen of the County and State aforesaid, and was in the year 1835.

James Abrahams appearing, and being examined by me, by consent of Wm. P. Mims, agent for Keziah Taylor and William Wynn, having been first duly sworn, deposeth and saith:

First Interrogatory. Do you know anything of a purchase made by Samuel P. Carson, to a settlement and improvement, in the year 1835, from Andrew Hemphill, situate in Foster's Prairie, in the County of Lafayette, said to contain from two to three hundred acres of prairie land?

Answer. I lived on a portion of Fisher's Prairie, in the year 1835, and I know that such purchase was made of Andrew Hemphill by Samuel S. Carson, in the spring of said year, some time about the month of April.

Interrogatory Second. Do you not know that the N. W. ¼ of section 18, T. 16, R. 25 west, to which Keziah Taylor now is seeking a patent from the General Government of the United States, forms a portion of said settlement sold by Andrew Hemphill to Carson?

Answer. It does; and since the death of Col. Samuel F. Carson it was sold by his executor, R. Hambleton, and Jacob Buzzard became the purchaser, and sold the same to William Wynn in the year 1840, and that the entire quarter has been under cultivation since the purchase made by Carson of Hemphill; and further this deponent saith not.

JAMES ABRAHAM.

The above deposition was taken by consent of parties, and duly sworn to before me at the Court-house of Lafayette County, State of Arkansas, this 8th day of August, 1843.

R. H. FINN,
J. P.

*D.*

Know all men by these presents, that I, Andrew Hemphill, of Lafayette County, Arkansas Territory, have this day bargained, sold, and conveyed my improvements, and all my right, title, and interest in and to said improvement and the land adjoining, and included by certain lines dividing Dr. Joseph Jones and myself, and on the west and north bounded by no claims of any person. This improvement is the one on which I now live, and I will give possession thereof to Samuel P. Carson, or his agent, to whom I have sold, and hereby convey, on or before the first day of January next, the quantity of land not conveniently ascertained, but believed to contain between two and three hundred acres of prairie land. I also sell and convey to said Carson my improvement, right, title, and interest in and to a certain bend and adjoining lands, lying and being on the west side of Red River, joining the lands of said Carson, which he purchased of John Myers above on said river, and adjoining the lands of Col. Josiah Garland, on the lower boundary of said land, and runs back and includes all the lands to a certain lake, commonly called the Cypress Brake Lake, which tract of land is hereby believed to contain two thousand acres more or less, all of which lands and improvements I, the said Hemphill, for and in consideration of the sum of thirty-seven hundred and fifty dollars, one thousand of which is paid in hand, and the remainder to be paid according to a note or obligation given by said Carson to me, the said Hemphill, and which is received in full payment for said improvements and lands, and which land and improvement I, the said Hemphill, do warrant and bind myself to defend to the said Carson, his heirs or assigns, against the claim or claims of all and every whatever, and hereby guarantee the peaceable possession of said lands to said Carson against the claims of all and every person, and against all claims whatever, except that of the government which it may belong.

Given under my hand and seal.

Attest,
Note, A. CUY.

Col. Hall and A. Hemphill, Esq., are to make and agree upon the line to divide Col. J. Garland's lands and the land hereby conveyed to said Carson, by said Hemphill, in accordance with an agreement made with said Garland and Carson upon the premises.

April 30th, 1835.

ANDREW HEMPHILL. [SEAL.]

Attest,
J. H. HALL,
JOHN A. BRYANT.

State of Arkansas. County of Lafayette.

I, Richard F. Sullivan, Clerk of the Circuit Court, and ex officio Recorder within and for the County and State aforesaid, do hereby certify, that the foregoing is a true copy of the transfer from Hemphill to Carson, as recorded on Record Book B, pages 130 and 131, in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of my office, at office, this 22d day of July, A. D. 1843. [L. S.]

R. F. SULLIVAN,
Clerk and ex officio Recorder L. O.

*E.*

Know all men by these presents, that I, Jacob Buzzard, of Lafayette County and State of Arkansas, have bargained and sold to William Wynn, of the County and State aforesaid, in and for the consideration of fifteen hundred dollars to him, the said Buzzard, in hand paid, the receipt of which is hereby acknowledged, the farm being and lying in Fisher's Prairie upon the public lands adjoining him, the said Wynn; also the bend lying on Red River, upon the public lands between J. Garland's farm and the Clawson Bend, now owned by Hamilton and Buzzard.

The described lands are the same that were sold by Robert Hamilton, Executor of Samuel P. Carson, deceased; and I, the said Buzzard, do bargain and sell the said Wynn the same that was sold at the sale of said Samuel P. Carson, deceased.

Given under my hand and seal this 25th April, A. D. 1840.

JACOB BUZZARD.

Witness,
WILLIAM JAMES,
JAMES TRULOVE,

Filed for record, 3d January, 1841.

R. F. SULLIVAN,
Clerk.

State of Arkansas, County of Lafayette, *ss.*

I, Richard F. Sullivan, Clerk of the Circuit Court, and ex officio Recorder, within and for the County and State aforesaid, do hereby certify, that the foregoing is a true copy of the original on file in my office.

In witness whereof, I have hereunto set my hand, [SEAL.] and affixed the seal of my office, at office, this 22d day of July, A. D. 1843.

R. F. SULLIVAN,
Clerk, and Ex officio Recorder L C.

GENERAL LAND OFFICE, February 8th, 1844.

Gentlemen: Your letter of the 12th September last, with its inclosures in reference to the claim of Keziah Taylor, per certificate 4615, has been received. Upon careful examination of the testimony, this office can see no grounds to justify (in behalf of Mr. Wynn) any action which could affect the decision made by you in her favor, and reiterated after the re-examination, directed a letter from this office of the 19th January, 1843.

Certificate 4615 has been placed on file for patenting, of which you will be pleased to advise Mr. Wynn without delay.

Respectfully, your obedient servant,

THOMAS H. BLAKE,
Commissioner.

Register and Receiver, Washington, Arkansas.

GENERAL LAND OFFICE, February 17th, 1848.

I, Richard M. Young, Commissioner of the General Land Office, do hereby certify the foregoing pages, from 1 to 20 inclusive, to be true copies from the originals on file and of record in this office.

In testimony whereof I have hereunto set my hand [SEAL.] and caused the seal of said office to be affixed, the day last above written.

RICHARD M. YOUNG,
Commissioner.

Filed Nov. 1st, 1850.

A. BYRNE,
Clerk.

*The Answer of Keziah Taylor.*

In Chancery.

The separate answer and disclosure of Keziah Taylor, one of the defendants to the bill of complaint of William Wynn, complainant. This defendant, reserving to herself all right of exception to said bill of complaint, for answer thereto says, that long before the institution of this suit, for value received, she absolutely sold to her said co-defendant, William F. Morris, the said N. W. ¼ of sec. 18, in T. 16

south, in R. 25 west, in complainant's said bill specified, and this defendant doth not now claim or pretend to have any right, title, claim, or interest in or to said quarter section; and this defendant doth hereby disclaim all right, title, or interest in or to the N. W. ¼ of sec. 18, in T. 16 in south, in R. 25 west, in complainant's said bill specified, and every part thereof. And this denies all unlawful combination and confederacy wherewith she is charged in and by said bill of complaint. Without that any other matter or thing in said bill contained, material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered unto, confessed or avoided, traversed or denied, is true, all which matters and things this defendant is ready and willing to aver, maintain, and prove, as this Honorable Court shall direct, and humbly prays to be herein dismissed, with her reasonable costs and charges sustained by her in this behalf.

KEZIAH TAYLOR.

WATKINS & CURRAN, and
T. HUBBARD,
Solicitors.

State of Texas, County of Fayette.

Be it known, that on this 7th day of October, A. D. 1850, before the undersigned, a Justice of the Peace, in and for the county aforesaid, duly commissioned and acting as such, came Keziah Taylor, above named, to me personally well known, and being by me for that purpose first duly sworn, made and subscribed the following affidavits, to wit:

That the facts stated in the above and foregoing answer, which she had subscribed with her mark, are true in substance and in fact, and that she is the person identified in said answer.

her
KEZIAH X TAYLOR,
mark.

Sworn to and subscribed the date above written.

WILLIAM B. BRIDGES,
J. P. F. C.

State of Texas, Fayette County, *ss.*

I, N. W. Taison, Clerk of the County Court, in and for the said County of Fayette, do hereby certify and make known, that William B. Bridges, whose name and signature appears to the above affidavit of the said Keziah Taylor, was at the date thereof a duly commissioned Justice of the Peace, in and for the said County of Fayette, and acting as such; and I further certify, that said County Court of which I am Clerk, is a Court of Record.

In testimony whereof, I, the said County Court, [SEAL.] hereunto set my name and signature, as such Clerk, at office, this 11th day of October, A. D. 1850.

N. W. TAISON,
C. C. C.

Filed October 29th, 1850.

A. BYRNE,
Clerk.

At a Circuit Court in Chancery, begun and held in and for the County of Lafayette aforesaid, on Monday, the 28th day of October, A.D . 1850, being the time prescribed by law for holding said Court, present the Hon. John Quillen, Judge and Chancellor, and afterwards on a subsequent day of said term, to wit, on the 31st day of October, A. D. 1850, present and presiding the Hon. John Quillen as aforesaid, the following proceedings were had, to wit:

WILLIAM WYNN
*v.*
WILLIAM F. MORRIS and
KEZIAH TAYLOR.

Bill.

The parties this day come by their solicitors, and said complainant files his exceptions in number to the said answer of the said William F. Morris, and also his motion to take from the files the disclaimers of said Keziah Taylor, and for a decree pro confesso against her, in accordance with the prayer of the bill, and also his motion for a rule upon said William F. Morris to produce and file exhibit marked A 1, referred to in his answer. Whereupon the said exceptions and said motion coming on to be argued, and being argued by counsel, the Court doth think that said exceptions are well taken, and ought to be allowed, and that said motion ought to prevail.

It is therefore adjudged, that said several exceptions, and of them be allowed, and that said William F. Morris answer anew as to so much of said bill as is attempted to be answered unto by such parts of answer as are to excepted to, in accordance with the requisition of said exceptions, on or before the first day of the next term of this Court. And it is further ordered and adjudged, that said disclaimer be taken from the files; and the said Keziah, having failed to plead, answer, except, or demur to said bill, it is ordered, adjudged, and decreed, that as against her all and singular the allegations of said bill be taken or confessed, and that unless she appear before the Court here, on or before the third day of the next term of this Court, and show cause for not answering, this decree be made final and absolute against her; to all which the said Morris and Taylor excepted, and tender their bill of exceptions, which is signed, sealed, and ordered to be made of record. And the said William F. Morris consents to file his said exhibit on to-morrow, whereupon by consent of parties is

agreed that the defendant's counsel may withdraw from the files, for the purpose of so further answering, the said answer of said Morris and the exceptions, and that all the depositions on file in this cause and in the dismissed suit between the same parties for the same subject-matter, shall be read as evidence on the hearing, as if they were at issue without any objection or exception, except as to the competency and relevancy, and that either party may take further depositions, or retake any testimony, or re-examine any witness, on notice, without commission, as if the cause were at issue.

And said complainant agrees to answer the cross-interrogatories of said Morris during the present term.

At the same term of said Court, to wit, on the 1st day of November, A. D. 1850, present and presiding the Hon. John Quillin, Judge and Chancellor, the following proceedings were had, to wit:

WILLIAM WYNN
*v.*
WILLIAM F. MORRIS and
KEZIAH TAYLOR.

Bill for Injunction, &c.

Came the defendant Morris, by solicitors, and files paper marked A. 1, mentioned in his answer, in accordance with the rule entered in this cause.

[For copy of paper marked A. 1, referred to in the above entry, see copy already made in this transcript, page 66.]—(Of present transcript, page 69.)

And at a subsequent day of said term, to wit, on the 2d day of November, A. D. 1850, present and presiding the Hon. John Quillin, Judge and Chancellor as aforesaid, the following proceedings were had, to wit:

WILLIAM WYNN
*v.*
WILLIAM F. MORRIS and
KEZIAH TAYLOR.

This day came the parties aforesaid, by their solicitors, and said Wynn files his answer to the cross-interrogatories of the said Morris, and by consent of the parties aforesaid leave is granted them to open their respective depositions, filed by agreement in this cause.

Wynn's answer to cross-interrogatories appears in the words and figures following, to wit:

In Lafayette Circuit Court. In Chancery, at Term 1850.

The answer of William Wynn to the cross-interrogatories exhibited in the answer of William F. Morris to the bill of complaint of said

William Wynn, against him and Keziah Taylor, in said Court in Chancery exhibited.

This respondent for answer to said interrogatories says, that before the said Keziah proved up her said pre-emption, said William F. Morris called at this respondent's house, and told him that there was an old lady at Morgan Cryer's house who had some claim to part of Fisher's Prairie, and wished to see this respondent; to which this respondent answered, that he had paid enough for claims in Fisher's Prairie, and if anybody had any further claim to any part of Fisher's Prairie, he knew nothing about it, and declined going to see her; and that said Morris did not remain more than ten minutes; for, having had a difficulty with Robert Hamilton, and finding him in the room when he came, he left directly. That said William F. Morris did not, nor did any person, inform this respondent, then or at any time before such pre-emption was proved, that said Keziah Taylor, or the old lady spoken of, claimed any pre-emption at all, much less any to the northwest quarter of section 18, in the bill mentioned; nor did he, before said pre-emption was proved thereon or heard, nor had been informed in any way, that said Keziah Taylor or anybody else had come to the County, intending to prove up a pre-emption right to any lands then or at any time in possession of or cultivated by this respondent; and that as to said Keziah Taylor, he never saw her in his life, and this he answers to the first interrogatory. To second interrogatory he answers, that he was not requested to purchase the claim of said Keziah before she proceeded to make proof of her intended pre-emption right. To the third interrogatory he makes the same answer as he has made to the first. Nothing more ever passed between him and said Morris in regard to her claim (before said proof was made) than is in his said answer stated. To the fourth interrogatory he answers in the negative, and states that said Keziah never did offer to sell him said land at any time; that he never saw her in his life; nor did any person ever offer to sell it to him on her behalf; but the said Morris did himself afterwards offer to sell it to this respondent, if he would give him six hundred dollars; but this was after it was entered, and after said Keziah was gone back to her home in the Republic of Texas; but this respondent understood from Andrew Hemphill, or James H. Wilson, after she had proved her pre-emption, that she wanted to sell to this respondent for a little negro.

To the fifth he answers, that he did make his protest to the Commissioner to the General Land Office, against the issuance of the patent to the said Keziah upon her said entry, but its date and contents he does not recollect, nor can he probably state either from recollection or belief, whether said protest is correctly stated in the answer, but he thinks in substance the statement of it is correct.

To the sixth he answers, that to the best of his recollection his said protest did contain such a request as is therein stated, and is willing to admit the same.

To the seventh he answers, that he did, by direction and instruction of the Commissioner of the General Land Office, take the deposition of Alexander P. Bales, in regard to the matters of said protest, but he has no recollection of Abraham's deposition, being taken at all, nor that this respondent took Morgan Cryer's; but as he recollects and believes the said Morris himself had that taken. To the eighth he answers emphatically in the negative, and avers that he never did agree with said Morris, that the opinions and decisions of the land officers, in regard to said protest, should be final and conclusive between said Morris, and that there should be no further litigation about the N. W. ¼ of sec. 18; nor was any agreement remotely or even in the remotest degree resembling it ever made, nor any such propositions ever made by said Morris.

And having fully answered, he prays as in and by his said bill he has prayed.

PIKE,
Solicitor.

I, William Wynn, do solemnly swear, that the matters stated in the foregoing answer and responses are true, in substance and in fact, so help me God.

WILLIAM WYNN.

Sworn to and subscribed in open Court, this 31st day of October, 1850.

A. BYRNE,
Clerk.

Filed November 2d, 1850.

A. BYRNE,
Clerk.

The motion of Complainant in the Lafayette Circuit Court in Chancery, October Term, 1850.

WILLIAM WYNN, complainant,
*v.*
WILLIAM F. MORRIS and KEZIAH TAYLOR.

The said complainant moves the Court to order to be taken from the files the paper purporting to be the answer and disclaimer of said Keziah Taylor, because no discovery whatever, as prayed by the bill, is thereby made, and for a decree pro confesso against her.

PIKE.

And the said complainant further moves the Court for a rule upon the said William F. Morris, to file, within a time to be fixed by the Court, Exhibit A. 1, referred to in his answer.

PIKE.

Filed October 31st, 1850.

A. BYRNE,
Clerk.

Morris's Bill of Exceptions, in the Lafayette Circuit Court, in Chancery, Fall Term, 1850.

WILLIAM WYNN
*v.*
WILLIAM F. MORRIS and KEZIAH TAYLOR. } In Chancery.

Be it remembered, that on this day the Court, without hearing any evidence dehors the record, sustains the motion of said complainant to strike out the answer and disclaimer of said defendant Taylor, to which opinion she excepted at the time, and now prays that the bill of exceptions in respect thereof, may be signed and sealed by the chancellor, and ordered to be made part of the record of this cause; and that it may be ordered that said answer and disclaimer remain with the papers of this case, and constitute and form part hereof, in like manner as if incorporated herein, which is accordingly done, this 31st day of October, 1850, at the time said decision was made.

Witness the hand and seal of the Judge and Chancellor.

JOHN QUILLEN, [SEAL.]
Judge and Chancellor of Lafayette Circuit Court in Chancery.

Filed October 31st, 1850.

A. BYRNE,
Clerk.

*Wynn's Exceptions to the Answer of Morris.*

In Lafayette Circuit Court, in Chancery, at October Term, 1850.

The exceptions of William Wynn to the answer of William F. Morris to the bill of complaint of William Wynn, against said William F. Morris and Keziah Taylor, in the Lafayette Circuit Court, in Chancery.

The said complainant comes and shows to the said Court that the said answer of the said William F. Morris is in many respects evasive and insufficient, wherefore he excepts thereto, and assigns the following grounds of exceptions:

First. That by said bill it is alleged, that the said Keziah Taylor, about the year 1830, removed to the Republic of Texas, with the intention of permanently remaining there and never returning to the United States; and said William F. Morris is required to answer in regard thereto, to which he responds, that he does not know the same of his own knowledge, without answering as to his information, hearsay, and belief.

Second. That it is alleged in said bill that one John Cryer, several years before the year 1829, settled on the N. W. and the N. E. quarters of section 18, in T. 16, south of R. 25 west, and there made an improvement, which, prior to 1829, he sold to one Massack H. Jones, who then settled thereon, and cultivated thereafter parts of both said quarter sections; and either said Cryer or said Jones laid thereon a Mexican claim, to a grant of a league and a lobar of land, which included the whole of said northeast quarter of section 18, and some of the southern part of the southwest quarter of section seven. That said Jones lived on and cultivated said improvement until 1833, when he sold it to a Dr. Jones, who lived on and cultivated the same until 1835, when he sold it to the complainant; in regard to all of which the said William F. Morris is required to answer, but only responds, that he does not know the same of his own knowledge, nor can he admit the same, and that he requires proof thereof, whereas he should have answered to his information, hearsay, and belief.

Third. That it is in said bill alleged, that in 1840 and 1841, in which years said lands were surveyed, by and under the authority of the United States, by Allen Martin and Charles E. Moore, deputy-surveyors, said northwest quarter was so included within your orator's fences, was so stated in the field books, and so carried afterwards upon the official plats of said township, made out by the Surveyor-General of Arkansas, and furnished the Register of the Land Office at Washington, to which said William F. Morris was required to answer, and responded thereto. That by whom said surveys were made, he does not know of his own knowledge, nor can he state from information, save by complainant's said bill, and requires proof of the same, whereas he was bound to answer, as to his hearsay and belief.

Fourth. That said bill sets up and states two Acts of the Congress of the United States, one of the 4th September, 1841, and one of the 19th March, 1842, and certain acts of the Governor of Arkansas thereunder, and the appointment by him of certain locating agents, and certain acts done by said agents, and the instructions given to them by said Governor, and his letters to both and one of them, whereby and by means of which the lands in controversy were selected and located for this complainant; and with said bill are exhibited copies of said instructions and letters, and the written evidence of said appointments, of which Exhibits, this marked V. 4 and V. 2, are exemplifications of parts of the Record of the Executive Office at Little Rock, each certified by the proper keeper of said records, to all which, and as to the correctness of all said Exhibits, said William F. Morris is required to answer; as to which he responds, that in regard to the whole thereof, he does not know of his own knowledge, nor can he state, save from complainant's bill, and requires proof of the same, when he should have answered also as to his hearsay and belief.

Fifth. That it is stated in said bill, that said land in controversy was, in a particular manner therein stated, located and selected by the State of Arkansas, through her proper agents, as part of a grant of 500,000 acres made to her by the United States, by the Act of Congress stated in said bill; and it states and exhibits certain instructions given by the Commissioner of the General Land Office to Registers of Land Offices, and certain information given by said Commissioner to the Secretary of the Treasury of the United States; and said bill also stated, that on the 4th September, 1841, said land had been surveyed in accordance with law; as to all which the said defendant was required to answer, and responds only, that as to all of the same he does not know, nor has been informed, save by complainant's bill, and insists on strict proof thereof, whereas he should have answered as to his hearsay and belief.

Sixth. That said bill sets up certain locations and selections of land, made as part of said grant by said Charles E. Moore, as locating agent, at the solicitation of this complainant, and by agreement with said Governor; and that said northeast quarter of section 18, and south half of section 7, and certain adjoining lands, were liable to such location by Act of Congress; and that said Moore made certain lists of the lands located by him at certain times, and notified the Register at Washington thereof, and that said Governor gave written information thereof to the Commissioner of the General Land Office, and sent copies thereof to the Register at Washington, Arkansas; to all of which said Morris is required to answer, and responds only, that as to all thereof he does not know of his own knowledge, nor has he been informed, nor can he state, save from complainant's said bill, and requires strict proof thereof, whereas he should also have answered as to his hearsay and belief, and whether the documentary evidences thereof, exhibited with this bill, from the records of the Executive Office at Little Rock, were, or were not, correct and true, forming Exhibit B 3 of said bill.

Seventh. That it is stated in said bill, that on the 2d day of May, A. D. 1842, the Commissioner of the General Land Office addressed a circular letter to the Registers of Land Offices in the United States, and among them to the Register at Washington, Arkansas, by whom the same was received, thereby prescribing in a certain manner, in the bill stated, their duties in regard to the location and selection of land, as part of said grant of 500,000 acres, and states certain instructions to have been given to said Register, among which was, "That from time to time, as the selecting agents should make report to them of the lands selected, they should note the same on the tract books and maps in their offices, and also make a record book, suitably arranged into columns, wherein they should register all the lists that might be filed in their offices, and transmit a copy of each to the General Land Office, from time to time, as they should receive them, and that each selection made by the locating agents should indicate

the day when it was actually made, so that the General Land Office might be enabled to determine between such selections and any pre-emption claim; as to all which said defendant was required to answer, and thereto evasively responds, that in regard to all thereof he does not know, of his own knowledge, nor has he been informed, save by complainant's said bill, and requires strict proof thereof, whereas he should have answered also as to his hearsay and belief.

Eighth. That said bill also states, that on receipt of such circular, and the opinion of said Commissioner in response to a letter of said Governor thereto annexed, showing that the title of said State to the lands selected (if subject to selection), became absolute from the day of selection, the said Governor, by letter, of date May 23d, 1842, informed the locating agents, and among them said Charles E. Moore, that they could make their selections and report them directly to the Register of the district in which the lands selected lay, but required them still to forward to the Executive Department of the State a copy of such selections, as required by his former instructions, and particularly instructed them not to fail to note in their list the particular day when such selection was made; and said bill exhibits from the records of the Executive Office at Little Rock, Ark's, copies of said circular and the opinion thereto annexed, and the letter of said Governor thereto annexed, mentioned in the next preceding exception, marking the same B 4, and of another letter of said Governor to said Commissioner, marked Exhibit 7; and said Wm. F. Morris was required to answer, as to the whole thereof, whereas he answers only, that in regard to said allegations, he does not know of his own knowledge, nor has he been informed, save by complainant's said bill, and insists on strict proof of the same, and answers nothing as to said exhibits, whereas he should have answered further, as to his hearsay and belief, and whether said exhibits were true and correct.

Ninth. That it is stated in said bill, that on the 2d day of June, A. D. 1842, the said Charles E. Moore forwarded to said Governor, a list of all the lands selected by him, as such locating agent, noticing therein the time and precise date of each location, among which he reported the said N. W. $\frac{1}{4}$ of section 18, as having been located and selected by him as part of said 500,000 acres, on the 18th day of May, 1842, and said south half of section 7, on the 28th day of April, 1842, which report and list were duly certified by him, and a true copy thereof forwarded to said Register at Washington, on the 8th day of June, 1842, there to be recorded, and thence to be forwarded to the General Land Office; and with said bill was exhibited a true copy of so much of said list, as reported the location of said land, and of the certificate thereto, and the memoranda of the Governor thereon, marked B 5, from the records in said Executive Office, and said defendant was required to answer in regard thereto, but to the whole thereof responds, that he does not know of his own knowledge, nor has he been informed, save by complainant's said bill, and requests

strict proof thereof, and makes no further answer, nor answers anything as to said exhibit, whereas he should have answered as to his hearsay and belief, and whether said exhibit was true and correct.

Tenth. That it is averred in said bill, that long before said Keziah Taylor established her pretended pre-emption, she had become a citizen of the Republic of Texas, and owed allegiance thereto; to which he answers that he does not know of his own knowledge, nor has he been informed, save by said complainant's bill, and requires strict proof of the same.

Eleventh. That it is stated in said bill, that said Keziah resided twelve years in the Republic of Texas, and was, during that time, continuously absent therein; to which said Morris is required to answer, but evasively answers that it may be true, but this he does not know of his own knowledge, and requires proof of the same, whereas he should have answered as to his information, hearsay, and belief.

Twelfth. That it is alleged in said bill, that in consequence of the establishment of said pre-emption of said Keziah, and the entry of said quarter section thereunder, the selection thereof for this complainant under said grant to said State, was utterly disregarded, and held by the General Land Office to be nullified; and this complainant was prevented from carrying out his contract, and was prepared to do so, immediately on learning that he was allowed to do it, and on what terms, but that before the law was passed which authorized him to purchase, and fixed the terms of purchase, said pre-emption was proven up, and the power of the State to sell was gone; that the Courts of the United States were closed to this complainant for want of jurisdiction—the title had passed from the United States, the said selections were abandoned by the State, and other selections made in lieu thereof, instead of his adhering to such original selections and protecting the complainant, whereby he had no remedy except in equity. To all which, said Morris was required to answer, and answered evasively that he does not know, nor has been informed, save by complainant's said bill, and requires proof thereof, whereas he should have answered also as to his hearsay and belief.

Twelfth. That it is stated in said bill, that said Charles E. Moore also selected in a particular manner stated in said bill, for this complainant, on the 28th of April, 1842, the S. W. $\frac{1}{4}$ of section 7, which location was also rejected by the Commissioner, and the same relocated on the 26th of January, 1846, by Henry Cheatham, and by him, on the 27th of November, 1848, assigned to the complainant, who executed therefor his bond to said State, as to which said Morris was required to answer, and answers evasively, that he does not know of his own knowledge, nor has he been informed, save by complainant's said bill, and requires proof of the same, whereas he should have answered as to his hearsay and belief.

Thirteenth. That as to the other exhibits in the said bill, marked

B 7, B 5, and B 4, as to all which the said Morris is required to answer, he has wholly failed to make any answer whatever, whether he knows, has been informed, or believes, or has heard them to be correct and true copies of the original.

Wherefore, the complainant for the grounds aforesaid, excepts to said answer, and prays that his said exceptions may be sustained, and the said William F. Morris compelled to make further answer as to such parts of said bill as are not well and sufficiently answered.

PIKE.

Filed November 1st, 1850.

A. BYRNE,
Clerk.

At a Circuit Court, sitting as a Court of Chancery, begun and held in and for the County of Lafayette, and State of Arkansas, at the court-house, in the Town of Lewisville, in said County, on the 5th Monday after the 4th Monday in March, A. D. 1851, being the 28th day of April, 1851. Present, the Hon. John Quillen, Judge and Chancellor in and for the Sixth Judicial Circuit of the State of Arkansas. The following proceedings were had on the 1st day of said Term, to wit:

| | |
|---|---|
| WILLIAM WYNN, Complainant,<br>*v.*<br>WILLIAM F. MORRIS, and<br>KEZIAH TAYLOR, Defendants. | In Chancery. |

At this day comes said defendant, William F. Morris, by Hubbard and Curran, and pursuant to leave given at the last Term, files his answer in respect of all the matters covered by the exceptions to his previous answer in this behalf.

*The Answer of William F. Morris to exceptions of Wynn.*

In Chancery.

The further answer of William F. Morris, one of the defendants, to the bill of complaint of William Wynn.

This defendant saving to himself the same benefit of exception to said bill, as by his former answer is saved, for answer as to the matters of the first exception taken to his former answer thereto, says: It is true that the said Keziah Taylor removed to the Republic of Mexico, but whether with an intention to return to these United States, this defendant does not know of his own knowledge, nor has he heard or been informed save by complainant's said bill, and cannot state from his belief or otherwise, whether the said Keziah intended to return to these United States, but this defendant admits, that the said Keziah from this time hitherto, has resided in Texas, the Republic of Mexico.

And this defendant, for further answer to the said bill, as to the matters of the said second exception taken to his said former answer, says, he does not know of his own knowledge, nor has he heard or been informed, save by complainant's said bill, and cannot state from his belief or otherwise, whether the said John Cryer, several years before the year 1829, settled on the N. W. and S. E. quarter of section 18, in township sixteen, south of range 25 west, and there made an improvement which, prior to 1829, he sold to one Massach H. Jones, who then settled thereon, and cultivated thereafter, parts of both quarter sections, nor whether the said Cryer or Jones laid thereon a Mexican claim to a league and lobar of land, which included the whole of the said northwest quarter of section 7, nor whether the said Jones lived on or cultivated said supposed improvement, until 1833, but this defendant has been informed, and believes it to be true, that the said Massach H. Jones sold an improvement situated in Fisher's Prairie, to a Doctor Jones, who lived on the same, until about the year 1835, when he sold the same to said complainant, and that said improvement included what is now the said northwest quarter of section 18, but this defendant insists on strict proof, that the said John Cryer, before the year 1829, settled on the said northwest quarter of section 18, and then made an improvement thereon, which, prior to 1829, he sold to the said Massach H. Jones, who then settled thereon, and cultivated thereafter parts of the said N. W. and N. E. ¼s of said section 18, and some of the southern part of the S. W. quarter of section 7, and that said Jones lived on and cultivated said improvement until 1833; and this defendant insists, that admitting all the matters and things by the said complainant alleged, to be true, the same do not afford any matter of equity whereon to found any relief to complainant against this defendant.

And this defendant, for further answer to said bill, as to the matter of the third exception taken to his said former answer, says, that he has been informed, and believes it to be true, that said lands, in 1840 or 1841, were surveyed by authority of the United States, but by whom, this defendant does not know, but admits that it may have been done by the said Allen Martin and Charles E. Moore, and that said northwest quarter of section 18 was found by such survey to be included in complainant's inclosure, and was so stated in the field books, and so carried to the official plats of said township, made out by the Surveyor-General of Arkansas, furnished to the Register of the Land Office at Washington, as complainant in his said bill has alleged.

And this defendant for further answer to said bill, as to the matters of the fourth exception taken to his said former answer, says, he has been informed and believes it to be true, that there such acts of Congress of the 4th September, 1841, and of the 19th March, 1842, as complainant has alleged, but as to the acts of his Excellency the Governor of Arkansas thereunder, the appointment of said locating

agents and their acts; the instructions of his Excellency the Governor of Arkansas, to said locating agents, and his letter to them or either of them, and whether the said N. W. ¼ of section 18 was so located for said complainant, and whether exhibits of complainant's said bill marked No. 4 and No. 2 are exemplifications of part or any part of the records of the Executive Office at Little Rock, duly certified by the proper keeper of the records; this defendant does not know of his own knowledge, nor has he heard or been informed, save by complainant's said bill, and cannot state from his belief or otherwise, and requires strict proof of the same; and insists that in case all the matters and things in regard thereto alleged by complainant were true, the same affords no ground of equity or relief in favor of complainant, as against this defendant. And this defendant, for further answer to said bill, as to the matters of the fifth exception, taken to his said answer, says, that he does not know of his own knowledge, nor has he heard or been informed, save by complainant's said bill, and cannot state from his belief or otherwise, whether the said northwest quarter of section 18 was situated and located by the State of Arkansas by her proper agents as part of said grant of 500,000 acres, made to the State of Arkansas by the said act of Congress; nor what instructions were given to the Commissioner of the General Land Office, to Register of Land Offices; nor what information was given by said Commissioner to the Secretary of the Treasury of the United States; nor whether said lands were surveyed before or after the 4th of September, 1841, in accordance with law, and requires strict proof of the same; and insists that in case all the allegations of said complainant in regard thereto were true, the same affords no ground of equity or relief in favor of said complainant, as against this defendant.

And this defendant for further answer to said bill, as to the matters of the sixth exception taken to his said former answer, that he does not know of his own knowledge, nor has he heard or been informed, save by complainant's said bill, nor can he state from his belief or otherwise, what selections and locations of lands were made as part of said grant, by the said Charles E. Moore, as locating agent, at the solicitation of the said complainant, and by agreement with said Governor, whether the said N. W. ¼ of section 18, and south half of section 7, and certain adjoining lands were liable to such location by Act of Congress, nor whether the said Charles E. Moore made certain or any lists of the lands selected by him, at any time, and notified the Register at Washington thereof; nor whether said Governor gave any information thereof to the Commissioner of the General Land Office, nor whether he sent copies thereof to the Register at Washington, Arkansas; nor whether Exhibit B 3, of complainant's bill, is a true copy of such proceedings; and requires strict proof of the same, and insists that in case all the allegations of said complainant in regard thereto were true, the same affords no ground of equity or relief to said complainant, as against this defendant. And this

defendant for further answer to said bill, as to the matter of the several exceptions taken to his said former answer, says, he does not know of his own knowledge, nor has he heard or been informed, save by complainant's said bill, and cannot state from his belief or otherwise, whether the Commissioner of the General Land Office, on the 2d day of May, 1842, or at any other time, addressed a circular letter to the Register of all Land Offices in the United States, and among others to the Register of the Land Office at Washington, Arkansas, nor whether the same was received by such Register, thereby prescribing in a certain manner, the duties of Register in regard to the selection and location of land as part of said grant of 500,000 acres, nor whether said supposed circular stated instructions to have been given to said Register, among others that from time to time as the selecting agent should make report to them of the lands selected, they should note the same in the tract books and maps in the offices, and make a record book suitably arranged into columns, wherein they should register all the lists that might be filed in their offices, and transmit a copy of each to the General Land Office, from time to time as they should receive them, and that each selection made by the locating agent should indicate the day when it was actually made, and requires strict proof of the same, and insists that in case all the allegations of said complainant in regard thereto, in case the same were true, would not afford any ground of equity or relief to said complainant, as against this defendant.

And this defendant, for further answer to said bill, as to the matters of the eight exceptions taken to his former answer, says, that he does not know of his own knowledge, nor has he heard or been informed, save by complainant's said bill, nor can he state from belief or otherwise, whether before or on the receipt of said circular, and the opinion of said Commissioner, in response to a letter of said Governor thereto annexed, stating that the title of said State to the lands selected (if subject to selection), became absolute from the day of selection, nor whether said Governor by letter of date 23d May, 1842, informed the locating agents, and among them the said Charles E. Moore, that they could make their selections and report them directly to the Register of the district in which the lands selected lay, nor whether said supposed locating agents were required by said letter still to forward to the Executive Department of the State a copy of such selections, as required by any former instructions, nor whether said Governor by his said letter particularly instructed said supposed agents not to fail to note in their lists, the particular day when such supposed locations were made, nor whether said exhibits from the Executive Office, copies of said supposed circular, and the opinion thereto annexed, and mentioned in the said preceding exhibit, marked B 4, nor if another letter of said Governor to said Commissioner, marked Exhibit 7, and requires strict proof of the same, and insists that in case all the allegations of said complainant in regard

thereto, were true, the same would not afford any grounds of equity or relief to said complainant, as against this defendant.

And this defendant for further answer to said bill, as to the matter of the ninth exception taken to his former answer, says, that he does not know of his own knowledge, nor has he heard or been informed save by complainant's said bill; nor can he state from his belief or otherwise, whether the said Charles E. Moore forwarded to said Governor a list of all the lands selected by him as such locating agent, noting the time and date of each location, and among them the said N. W. ¼ of section 18, as having been located and selected by him as part of said 500,000 acres on the 16th day of May, 1842, and said south half of section 7, on the 28th day of April, 1842, which report and list was duly certified by him, and a copy thereof sent to said Register at Washington, on the 8th day of June, 1842, to be recorded and forwarded to the General Land Office; nor whether Exhibit B 5, of complainant's said bill, is a true copy of so much of said list as reported the supposed location of said land, and the certificate thereto and the memoranda of the said Governor thereon, from the records of said Executive Office, and requires strict proof of the same, and insists that in case all the allegations of said complainant in regard thereto were true, the same would not afford any ground of equity or relief for said complainant as against this defendant.

And this defendant for further answer to said bill, as to the matters of the tenth exception taken to his former answer, says, that it is true that the said Keziah Taylor had resided in the Republic of Texas, long before she had proved up her said pre-emption, and so far as this defendant knows or believes, was rightfully entitled to all the privileges of citizenship in said republic. But this defendant insists that thereby she did not nor had not forfeited her right of citizenship under the government of the United States, and was in no way disfranchised of her rights under this government by becoming a citizen of the Republic of Texas.

And this defendant for further answer to said bill, as to the matters of the eleventh exception taken to his former answer, says, that he does not know of his own knowledge, nor has he heard or been informed, save by complainant's said bill, nor can he state from his belief or otherwise, whether in consequence of the establishment of said pre-emption right, said Keziah on the entry of said quarter section thereunder, the selection thereof for said complainant, under said grant to said State, as alleged, was utterly disregarded and held by the General Land Office to be nullified, nor whether said complainant was prevented from carrying out his said contract with said Governor, nor whether said complainant was ready and willing to carry out his said supposed contract; nor whether said complainant was prepared to do so, immediately on being informed that he was allowed to do it; nor whether before any law was passed, which

authorized said complainant to purchase and fix the terms of purchase, was proven up and the power of the State to sell was gone; nor whether the Courts of the United States were closed to said complainant for want of jurisdiction, the supposed title had passed from the United States; nor whether the supposed selections were abandoned by the State, and other selections made in lieu thereof, instead of the State adhering to such original selections and protecting said complainant, whereby he had no remedy except in equity, and requires strict proof of the same; and insists that in case all the allegations of said complainant in regard thereto were true, the same affords no ground of equity or relief to said complainant, as against this defendant.

And this defendant for further answer to said bill, as to the matters of the twelfth exception taken to his former answer, says, that he does not know of his own knowledge, nor has he heard nor been informed, save by complainant's said bill, and cannot state from his belief or otherwise, whether the said Charles E. Moore, in the manner stated in said bill, located for said complainant on the 28th day of April, 1842, the S. W. ¼ of section 7, which location was rejected by the Commissioner, and the same re-located on the 26th of January, 1846, by Henry Cheatham, and by him on the 27th December, 1848, assigned to complainant, who executed therefor his bond to said State, and requires strict proof of the same, and insists that in case all the allegations of said complainant in regard thereto were true, the same affords no ground of equity or relief to said complainant as against this defendant. And this defendant for further answer to said bill, as to the matters of the thirteenth exception taken to his former answer, says, that he does not know of his own knowledge, nor has he heard nor been informed, save from complainant's said bill, and cannot state from his belief or otherwise, as to the truth or existence of the matters of which Exhibit B 7, and B 4, and B 5 of complainant's said bill purport to be copies; nor can this defendant state, from his own belief or otherwise, whether said Exhibits B 7, B 5, and B 4, are true copies of said supposed originals.

And this defendant, having fully answered said bill, prays, as in his said former answer he has prayed.

WATKINS & CURRAN, and
T. HUBBARD.

Lafayette Sct.

I, William F. Morris, above named, do state on oath, that the facts contained in the foregoing answer, so far as the same are stated of my own knowledge, are true, and so far as stated upon information and belief, I believe the same to be true.

WM. F. MORRIS.

Sworn to and subscribed in open Court, this 28th day of April, 1851.

A. BYRNE,
Clerk.

Filed April 28th, A. D. 1851.

A. BYRNE,
Clerk.

At a Circuit Court, begun and held in and for the County of Lafayette and State of Arkansas, at the court-house in the Town of Lewisville, in said County, on the 5th Monday after the 4th Monday of September, being the 28th day of October, A. D. 1851, present the Hon. John Quillen, Judge and Chancellor of the Sixth Judicial Circuit of the State of Arkansas; and on a subsequent day of said term, to wit, November the 1st, 1851, the following among other proceedings were had, on the chancery side thereof, before his Honor the Judge and Chancellor as aforesaid, to wit:

WILLIAM WYNN, Complainant,
*v.*
WILLIAM F. MORRIS, and
KEZIAH TAYLOR, Defendants.

Came the parties aforesaid, by their solicitors, and the complainant enters his replication, in short by consent, to the answer of said defendant; and on motion it is ordered, that the complainant have leave to withdraw from the files of this Court certain Exhibits, for the purpose of having them authenticated.

At a Circuit Court in Chancery, begun and held in and for the County of Lafayette and State of Arkansas, at the court-house in the Town of Lewisville, in said County, on the 5th Monday after the 4th Monday of September, being the 28th day of October, A. D. 1851, present the Hon. John Quillen, Judge and Chancellor of the Fifth Judicial Circuit of the State of Arkansas, and on a subsequent day of said term, to wit, on Friday, the 7th day of November, 1851, present and presiding as of the first day, the following among other proceedings were had, to wit:

In Chancery.

WILLIAM WYNN, Complainant,
*v.*
WM. F. MORRIS, and
KEZIAH TAYLOR, Defendants.

At this day come said parties, and, by consent, this cause is set down for final hearing at the next term of this Court, with leave for either party to take depositions generally.

At a Circuit Court, begun and held in and for the County of La-

fayette and State of Arkansas, at the court-house in the Town of Lewisville, in said County, on the 5th Monday after the 4th Monday of September, being the 28th day of October, A. D. 1851, present the Hon. John Quillen, Judge and Chancellor of the Sixth Judicial Circuit of the State of Arkansas; and on a subsequent day of said term, to wit, on the 7th day of November, A. D. 1851, present and presiding as of the first day, the following among other proceedings were had, on the Chancery side thereof, to wit:

Bill.

WILLIAM WYNN, Complainant,
*v.*
WILLIAM F. MORRIS and
KEZIAH TAYLOR, Defendants.

Came the parties, by their solicitors, and this cause is set for hearing upon the bill, answer, and replications, and Exhibits, and all depositions taken and to be taken, as well as the depositions taken between the parties, in a cause dismissed in this Court for the same subject-matter; and, by agreement, all depositions taken on either side are to be opened when either party shall require.

State of Arkansas, County of Lafayette.

At a Circuit Court in Chancery, began and holden at the court-house, in the town of Lewisville, on the 5th Monday after the 4th Monday of March, A. D. 1852, being the 20th day of said month, present and presiding the Hon. Shelton Watson, Judge of the 6th Judicial Circuit in said State, and upon a subsequent day of said term, to wit: on the 6th day of May, 1852, present and presiding as of the first day, the following, among other proceedings, were had on the Chancery side thereof, to wit:

WILLIAM WYNN, Complainant,
*v.*
WILLIAM F. MORRIS, and
KEZIAH TAYLOR, Defendants.

It is ordered by the Court that this cause be continued, in consequence of the inability of Capt. Pike, complainant's counsel, to attend this court.

State of Arkansas, County of Lafayette.

At a Circuit Court in Chancery, began and holden at the court-house, in the town of Lewisville, on the 5th Monday after the 4th Monday of March, A. D. 1852, being the 20th day of said month, present and presiding the Hon. Shelton Watson, Judge and Chancellor of the 6th Judicial Circuit in said State, and upon a subsequent

day of said term, to wit: on the 7th day of May, 1852, present and presiding as of the first day, the following, among other proceedings, were had, to wit:

WILLIAM WYNN, Complainant,
*v.*
WILLIAM F. MORRIS, and
KEZIAH TAYLOR, Defendants.

Came the parties by solicitor, and on motion it is ordered that either party have leave to open and publish their depositions in this cause.

At a Circuit Court in Chancery, begun and held in and for the County of Lafayette and State of Arkansas, at the court-house, in the town of Lewisville, in said county, on the 2d day of May, 1853, and being the time fixed by law for holding said Court, present and presiding the Hon. Shelton Watson, Judge and Chancellor of the 6th Judicial Circuit in the State of Arkansas, and on a subsequent day of said term, present and presiding as of the 1st day, to wit: the 14th day of May, 1853, the following, among other proceedings, were had, to wit:

WILLIAM WYNN, Complainant,
*v.*
WILLIAM F. MORRIS, and
KEZIAH TAYLOR, Defendants.

Bill in Chancery.

Be it remembered, that on this day, this cause came on for final hearing and determination upon, and several exhibits therein referred to, and upon the answer of said Morris to said bill, and the exhibits therein referred to, and upon the answer of said Wynn to the cross-interrogatories propounded to him, and upon the replication to said several answers, and upon the patent for the land in controversy granted to said Keziah, and the deed of said Keziah to said Morris, which said patent and deed were filed herein on yesterday, and read in evidence by said Morris, and upon the depositions of Richard H. Finn, Andrew Hemphill, Charles C. Allen, John Waggoner, Alex. P. Bales, and James L. M'Laughlin, taken and read upon the part of complainant, and upon the depositions of Morgan Cryer, Lewis B. Fort, James Abraham, Thomas Cryer, and Mildred Cryer, taken and read upon the part of said Morris. The said exhibits and documents were read without objection as if duly proven and authenticated, and the said cause being so submitted on the pleading and evidence aforesaid, the Court, after hearing the argument of counsel, and being fully advised in the premises, is of opinion, and doth find and determine, that said complainant is not entitled to any part of the relief sought in and by said bill, and that the same ought to be

dismissed, and the prayer thereof denied; and that said William F. Morris is the absolute owner of the land in controversy.

It is therefore considered, adjudged and decreed by the Court here, that said complainant's said bill of complaint in this behalf be, and the same is hereby absolutely dismissed, and the prayer thereof denied; and that the injunction granted in this cause be, and the same is hereby dissolved and vacated; that said Morris do have execution of his said judgment at law, and that said Morris recover against said Wynn such damages as he may have sustained by reason of said injunction. Whereupon comes said Wynn in open court and waives his right to a jury to assess the said damages, and agrees that said damages shall be assessed at the sum of $1302 60, being six per centum on the damages specified in said action at law, and one thousand two hundred dollars ($1200), being the rents and profits of said lands from the day said injunction was granted until this time; and thereupon the Court, in pursuance of said agreement, assesses the damages at the said sum of $1320 60. It is therefore ordered, considered, adjudged, and decreed by the Court here, that said Morris do have and recover against said Wynn, and that said Wynn do pay to said Morris, the said sum of thirteen hundred and twelve dollars and sixty cents, the damages so assessed as aforesaid, together with all the costs by said Morris, in this behalf expended.

Whereupon comes the said William Wynn and prays an appeal from the decision and decree in this Court in this case, to the Supreme Court of the State of Arkansas, and at the same time files his affidavit, that this appeal is not made for vexation and delay, but that he verily believes that he is aggrieved by said decision and decree of this Court; and thereupon also came John Dicks and Lewis B. Fort, as his securities, who are by the Court approved as sufficient, who, together with the said William Wynn, here in open court, acknowledge themselves to owe and be indebted to the said William F. Morris in the penal sum of eight thousand dollars (which sum is fixed by the Court here, as the amount of the recognizance in this cause), to be levied of their respective goods and chattels, lands and tenements; to be void upon condition that the said William Wynn shall prosecute his said appeal in this case taken, with effect, and shall perform such decree as shall be made by the Supreme Court of the State of Arkansas therein, and pay the damages and costs which may be adjudged against him: else to remain in full force and effect.

Whereupon the said appeal is by the Court here granted; and it is ordered, that it operate to stay proceedings herein, and as a supersedeas to said decision and decree, and that the Clerk of this Court do make out and transmit to the Clerk of the Supreme Court a transcript and exemplification of all the records, proceedings, exhibits, papers, testimony, and proceedings, in this case forthwith.

The patent to the said lands in controversy, granted to the said

Keziah Taylor, referred to in the above and foregoing decree, appears in the words and figures following, to wit:

Certificate, No. 4615.

The United States of America. To all to whom these presents shall come, greeting:

Whereas Keziah Taylor, of Lafayette County, Arkansas, has deposited in the General Land Office of the United States a certificate of the Register of the Land Office, at Washington, whereby it appears that full payment has been made by the said Keziah Taylor, according to the provisions of the Act of Congress of the 24th of April, 1820, entitled, An Act making further provision for the sale of the public lands, for the N. W. ¼ of section 18, in T. 16 S., of R. 25 W. (south of Red River), in the district of land subject to sale at Washington, Arkansas, containing one hundred and fifty-seven acres and eleven hundredths of an acre, according to the official plat of the survey of the said lands, returned to the General Land Office, which said tract has been purchased by the said Keziah Taylor.

Now know ye, that the United States of America, in consideration of the premises, and in conformity of the several Acts of Congress, in such case made and provided, have given and granted, and by these presents do give and grant, unto the said Keziah Taylor, and to her heirs, the said tract above described, to have and to hold the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereto belonging, unto the said Keziah Taylor, and to her heirs and assigns forever.

In testimony whereof, I, John Tyler, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be thereunto affixed.

Given under my hand, at the City of Washington, the 22d day of February, in the year of our Lord one [L. S.] thousand eight hundred and forty-four, and of the Independence of the United States the sixty-eighth year.

By the President,

JOHN TYLER.

By R. TYLER,
Secretary.

Recorded vol. 9, p. 248.

J. WILLIAMSON,
Recorder of the General Land Office.

Filed May the 13th, 1853.

A. BYRNE,
Clerk.

The deed of the said Keziah Taylor to the said William F. Morris, to the said lands in controversy heretofore referred to, appears in the words and figures following, to wit:

Know all men by these presents, that I, Keziah Taylor, of Liberty County, Texas, for and in consideration of four hundred dollars, the receipt whereof is hereby acknowledged, do hereby grant, bargain, and sell, and by these presents do grant, bargain, sell, alien, and release unto William F. Morris, his heirs and assigns, forever, the following described lot or parcel of land, known and designated on the United States Surveys as the N. W. $\frac{1}{4}$ of section No. 18, in T. No. 16, south of R. No. 25 west, containing one hundred and fifty-seven acres and eleven hundredths, be the same more or less, entered at the Land Office at Washington, Arkansas, and situated in the County of Lafayette and State of Arkansas, to have and to hold to the said William F. Morris, of the County of Lafayette and State of Arkansas, his heirs, assigns, &c.; and the said Keziah Taylor do hereby bind herself, her heirs, executors, and administrators, to warrant and defend the title to the said tract of land against the claim, or claims, of all and every person whatsoever.

In testimony whereof, I have hereunto set my hand
[SEAL.] and affixed my seal, this 10th day of December, A. D. 1842.

her
KEZIAH X TAYLOR.
mark

M. CRYER,
R. F. RICHARDSON.

State of Arkansas. County of Lafayette, *sct.*

On this 7th day of March, 1843, before me, Richard F. Sullivan, Clerk of the Circuit Court, within and for the County and State aforesaid, personally appeared Morgan Cryer, to me well known to be the person whose name appears upon the foregoing instrument of writing, as a subscribing witness thereto, and being by me first duly sworn, states on oath, that he signed the same at the request of Keziah Taylor, the grantor thereto, as a witness, that she stated that the same was her act and deed, hand and seal, for the purposes and uses therein expressed, on the day and year therein mentioned.

In testimony whereof, I have hereunto set my hand
[SEAL.] as Clerk, as aforesaid, and affixed the seal of my office, at office, this 7th day of March, A. D. 1843.

R. F. SULLIVAN,
Clerk.

State of Arkansas, County of Lafayette, *sct.*

I, Richard F. Sullivan, Clerk of the Circuit Court, and Ex officio

Recorder, within and for the County and State aforesaid, do hereby certify, that the foregoing deed of conveyance was filed in my office for record, on the 7th day of March, A. D. 1843, and that the same is now duly recorded, in record book D, pages 109 and 110.

In witness whereof, I have hereunto set my hand, [SEAL.] as Clerk aforesaid, and affixed the seal of my office, at office, this 7th day of March, A. D. 1843.

R. F. SULLIVAN,
Clerk and Ex officio Recorder.

Filed the 7th March, A. D. 1843, for Record.

R. F. SULLIVAN,
Clerk.

Filed May 13th, 1853.

A. BYRNE,
Clerk.

*The Depositions of Richard H. Finn,*

A witness in behalf of complainant, taken before Hardin Williams, an acting Justice of the Peace, in and for the County of Hempstead, and State of Arkansas, on the 17th day of October, A. D. 1849.

Question. Are you acquainted with the parties to this suit?

Answer. I am, and have been for some time.

Question. Are you or not, acquainted with what is called Fisher's Prairie, in Lafayette County, Arkansas? If so, how long have you been acquainted with it, and when did you first see it?

Answer. I have been acquainted with Fisher's Prairie, in Lafayette County, Arkansas, near twenty-five years.

Question. State if you can, whether a settlement was ever made in Fisher's Prairie by a man by the name of William Hemphill? If so, was his settlement an improvement on the public lands of the United States, or was it entered land?

Answer. There was a man by the name of William Hemphill, who had a settlement or improvement in Fisher's Prairie, in the year 1823, and he was residing thereon at that time, but I do not know how long he lived there. Mrs. Keziah Taylor, one of the defendants to this suit, was his widow.

Question. State whether or not said William Hemphill had issue by said Keziah Taylor. If so, how many?

Answer. He did leave issue by the said Keziah Taylor, but how many I cannot tell.

Question. State if you know whether the said Keziah married again. If so, to whom, and how long after the death of said William Hemphill.

Answer. I understood that she married a man by the name of Jacobs.

Question. Where did said Jacobs reside after his marriage with said Keziah, and where is he now?

Answer. I do not know, unless it was on the place, on which the said Keziah lived during her widowhood as Mrs. Hemphill. Jacobs died many years ago.

Question. Did or did not said Jacobs and said Keziah have any lawful issue?

Answer. I do not know.

Question. Where did the said Keziah and the said Jacobs (her husband) reside at the time of his death?

Answer. I think they resided in Fisher's Prairie, at the time of the death of said Jacobs.

Question. Where is the said Keziah at present?

Answer. Some years after the death of said Jacobs, as well as I now recollect, the said Keziah removed to Texas. I cannot now state how long it has been since she left for Texas, but I should think it has been near eighteen years ago that she left for Texas.

Question. State whether you were at a public sale of the property of one Samuel P. Carson, deceased, made by one Robert Hamilton, as his executor. If so, when was said sale, when did it take place, and what was sold?

Answer. I was at the sale of the property of Samuel P. Carson, deceased. It was in 1839. It was made by Robert Hamilton, the executor of said Carson. Negroes, farming utensils, mules, and improvements in the public lands were sold. It took place in Fisher's Prairie, and I think it was on the improvement made by said William Hemphill.

Question. Was or not the improvement of said Hemphill, so made by him as above stated, in Fisher's Prairie, sold at such sale?

Answer. There was an improvement sold on that day, called the Hemphill land. I paid no attention to it, more than I merely heard statements to this amount.

Question. Were there many persons present? If so, state whether Morgan Cryer and William F. Morris were there?

Answer. There was a large collection of persons at that sale. I think Morgan Cryer was present. I do not know whether Morris was present or not.

Question. State whether or not, there was any objection made to the sale of the Hemphill land, or was there any claim set up to it by any one at such sale?

Answer. I heard no one object to the sale, or set up any claim to said land at that time.

R. H. FINN.

*The Deposition of Andrew Hemphill,*

Taken before Morgan Williams, Justice of the Peace, in behalf of the complainant, on the 18th day of October, A. D. 1849.

Question. What is your age and place of residence?

Answer. I am forty-seven years old, and reside in Sevier county, Arkansas, and have resided there since the year A. D. 1836.

Question. Where did you reside before you removed to where you now reside?

I resided in what is called Fisher's Prairie, in Lafayette County, Arkansas; I settled there in the month of January, A. D. 1829, and resided there from that time to the time of my removal to Sevier County, in the year A. D. 1836 as above stated.

Question. Are you or not acquainted with the parties to this suit? If so how long have you known them?

Answer. I am acquainted with them; I first became acquainted with the complainant some time in the year 1834. I became acquainted with the defendant, William F. Morris, in 1830 or 1831, I cannot now state which year, and with Keziah Taylor in the year A. D. 1815 or 1816.

Question. State if you ever knew a man by the name of William Hemphill; if so, were you of kin to him; where did he reside; where is he now; was he married or single?

Answer. I did know a man by the name of William Hemphill; I have known him all my life; he was my brother, but was upwards of five years my senior; he lived with our father and mother until he grew up, and after having attained his majority, resided a few years in Clark County, Arkansas, from which place he removed to and settled in Fisher's Prairie, then in Hempstead, but now in Lafayette County, Arkansas, in said Prairie, in 1819 or 1820; he died, if I mistake not, in the year A. D. 1825; he was a married man at the time of his death, and had been for near ten years: he was the first husband of the defendant, Keziah Taylor.

Question. You say your brother William Hemphill was a married man, who did he marry, and where is his wife now, and had he any children at the time of his death? If so, how many, and where are they now?

Answer. He married a Miss Keziah Cryer, who is Keziah Taylor, the defendant; the said Keziah now resides in Texas, as I have understood; the said William and said Keziah had issue, and two of their children were living at the time of the said William's death; one of them died since the death of said Willliam; it died in Texas; the other (a female) went with Keziah Taylor (her mother) to Texas, and was alive and married the last I knew of her, which was near two years ago.

Question. You say your brother William settled in Fisher's Prairie in 1819 or 1820; state whether he had any improvement of his own, in said Prairie? If so, was it public land of the United States, or had he a patent or fee simple deed for the same?

Answer. He did have an improvement on the public lands lying in Fisher's Prairie. It was unsurveyed land, and he had no patent or deed therefor as far as I know, for the lands in said Prairie were not surveyed and brought into market for many years after

the death of said William. Those lands were surveyed by a Mr. Moore.

Question. What was the number of acres in the improvement of your brother William at his death, and have you or not seen said Prairie since it was surveyed by Mr. Moore (the government surveyor) and brought into market? If so, what is the description of said land so embraced in his said improvement, if you know?

Answer. I think he had eighteen or twenty acres in his improvement when he died. I have been to Fisher's Prairie frequently since the same was surveyed by the said Moore, and have traced the lines in and through said Prairie. The improvement of said William Hemphill, was on what is now designated on the plat and survey as the N. W. $\frac{1}{4}$ of sec. 18, in T. 16 S., of R. 25 west, south of Red River. The dwelling-house of the said William is embraced in the S. W. $\frac{1}{4}$ of sec. 7, in the township and range aforesaid.

Question. You say the said William Hemphill died in 1825, state what became of his widow and children; did or did not his widow marry afterwards? if so, to whom?

Answer. The widow and children of said William continued to reside on the improvement until some time in the year 1828, or it might have been in 1827, at which time she intermarried with a man by the name of Thomas Jacobs. The two children she had by William Hemphill resided with them.

Question. You say she intermarried with one Thomas Jacobs; where is the said Jacobs now?

Answer. Jacobs is dead. He died in Fisher's Prairie in the latter part of 1828.

Question. Did said Keziah have issue by said Jacobs or not?

Answer. She had one child by Jacobs, which has since died.

Question. You say the said Thomas Jacobs died in 1828; what became of the said Keziah afterwards? did she ever marry again? if so, to whom?

Answer. She continued to reside on the improvement made by the said Wm. Hemphill until some time in the month of April, A. D. 1830, as nearly as I can now state, when she left for Texas, where she settled. I feel quite certain that she did not remain in Fisher's Prairie later than the latter part of April, 1830. I was living in said Prairie within two miles of her when she left. She ran away from Fisher's Prairie, and has lived in Texas I understand ever since. She afterwards intermarried with one Taylor, from whom she takes her present name. She still resides in Texas.

Question. You say she removed to Texas in April, 1830. She being a widow, was she assisted in getting off, or did she go alone? If assisted, who assisted her to remove?

Answer. She was assisted to remove by one James M'Laughlin, as I have been informed by said James.

Question. You say she removed in April, A.D. 1830. What be-

came of the improvement of the said William Hemphill, after it was abandoned by the said Keziah?

Answer. It fell into the hands and possession of one Alexander P. Bales, who lived on it, but how long he did reside thereon, I am not able to state. Said Bales sold the improvement as I understand to one Morgan, who is a brother of the said Keziah Taylor, in the year 1833, (as I now think). I purchased the improvement of the said Morgan Cryer. I took a written transfer from said Cryer for said improvements, but it has become lost or mislaid. I resided on it from the year 1834 till the latter part of A.D. 1835. I raised two crops on it in the year 1835; I sold said improvement to one Samuel P. Carson, who has since died. I made him a written transfer to said Carson, which is of record as I believe in the office of the Clerk of Lafayette County, Arkansas. Samuel P. Carson died some time in 1837 or 1838, and one Robert Hamilton became his executor; said Hamilton, as such executor, made a sale in the year 1839 of the property of said Carson; it was at public sale; notices had been circulated that such sale was to be. I attended said sale, negroes, farming utensils, mules, horses, and other things were sold. The improvement was sold at that time to the highest bidder, and was purchased by one Charles Carson.

Question. Were there many persons at said sale, and were you there yourself? Was or not the said defendant, William F. Morris, and Keziah Taylor there, and did you or not see Morgan Cryer (the brother of said Keziah there)?

Answer. There was a large concourse of people there. I was there; I do not now recollect, whether William F. Morris was there or not. Keziah Taylor I did not see there. Morgan Cryer was there, I think.

Question. State where said sale took place?

Answer. It took place on the improvement of said William Hemphill, and at the house where he and the said Keziah resided, and from which she removed when she left for Texas. The said improvement had been in the possession of said Carson, from the time of his purchase thereof till his death.

Question. How was the improvement described or pointed out?

Answer. I think it was called the Hemphill Improvement, at the sale.

Question. State if know, whether the land now in controversy between the said complainant and said defendants, is the same on which the said Hemphill resided, and whether it is the same that was sold at the sale of Carson's estate?

Answer. It is the same land and improvement that said William cultivated, but it is not the same on which the house of said William was situated.

Question. You say that the said Keziah removed to Texas, did

she or not leave any person in Lafayette County or elsewhere, as her agent to settle up her business? If so, who was he?

Answer. I think she made James McLaughlin, who then resided in Fisher's Prairie, as her agent. I have seen the instrument of writing, signed and acknowledged by her, by which she empowered him to act as such. I also transacted some business with him as her agent, after she removed to Texas.

Question. State if you can, whether the said Keziah ever returned to the State of Arkansas, after she removed to Texas. If so, when and for what purpose did she return?

Answer. The said Keziah did return to Arkansas. When she did return, she proved up a right of pre-emption to said improvement. This was after the land was surveyed, by the said Mr. Moore, I saw her in Lafayette County; she told me she had been to the Land Office in Washington, Arkansas, and had established a right of pre-emption to said improvement of the said Hemphill, made by him in 1819 or 1820, and which was embraced in the quarter section above mentioned.

Question. Do you know who had said improvement in possession, when the said Keziah proved up her pre-emption thereto?

Answer. I think the complainant had it in possession and in cultivation, and has had ever since.

Question. You say you saw Mrs. Keziah Taylor, a few days after she had established a right of pre-emption to said improvement, did she settle in Arkansas, or did she leave for Texas?

Answer. She did not settle in Arkansas, but went back to Texas in a short time, where she now resides.

Question. You say that you bought the improvement aforesaid, from Morgan Cryer, do you know how much said Cryer paid for it?

Answer. He told me he gave Alexander P. Bales $50 for it.

Question. Where did the said Cryer and Bales reside, when the said Keziah removed to Texas?

Answer. Morgan Cryer lived in Fisher's Prairie, and Bales lived somewhere in Lafayette County.

Question. You have stated, that you were present at the sale of said improvement, &c., then owned by Samuel P. Carson, deceased; did any person or persons set up any claim to said improvement, or forbid the sale thereof on that occasion?

Answer. No person or persons, set up any claim to, or forbid the sale of said improvement, on that occasion, that I heard of.

Question. Where did the said Keziah and her former husband (Thomas Jacobs) reside at the time of his death?

Answer. They resided on the improvement made by said William Hemphill, or rather the house in which they lived was on the S. W. ¼ of section 7, township and range above mentioned.

Question. Did the said Keziah cultivate any portion of said improvement after the death of said Jacobs? If so, how much?

Answer. She did not. The improvement of said William Hemphill was cultivated by one Charles Y. Douglass, after the death of said Jacobs. He cultivated it, as I believe, in 1829, and resided on it whilst he was cultivating it. He left it before the year expired, as well as I now can recollect.

A. HEMPHILL.

Opened and published, in open Court, this May 9th, 1853.

A. BYRNE,
Clerk.

*Deposition of Charles C. Allen,*

A witness in behalf of complainant, taken before Alexander Byrne, a Master in Chancery, in and for the County of Lafayette, and State of Arkansas, on the 17th day of March, A. D. 1852.

Question. Where do you reside, and how long have you so resided?

Answer. I reside in Lafayette County, Arkansas, and have for about eight years, and about fifteen years in this State.

Question. State whether you ever applied to the Register of the Land Office for the Red River Land District of Arkansas, to prove up and establish a right of pre-emption on any of the public lands of said State. If so, when did you apply, and what was the result of that application?

Answer. I applied at the Land Office in Washington to have a pre-emption, I think in 1843, to Wheat, the Register. He (Wheat) asked me if I had my wife on the place upon which I wished to prove a pre-emption; I told him no; he said I could not prove a pre-emption unless I was living upon the place, with my family; and further this deponent saith not.

CHARLES C. ALLEN.

*Deposition of John Waggoner,*

A witness in behalf of complainant, taken before Alexander Byrne, Master in Chancery, &c., on the 17th day of March, A. D. 1852.

Question. Where do you reside, and how long have you so resided?

Answer. I live in Lafayette County, Arkansas, and have lived here in this County about thirty years.

Question. Did you and one George Dooly ever make and subscribe an affidavit in order to establish a pre-emption claim, in favor of one of the defendants, Kezlah Taylor, upon any of the public lands of the United States situate in the State of Arkansas? If so, before whom was such affidavit made, and for what was it made?

Answer. Myself and one George Dooly did make such affidavit, and, perhaps, subscribed the same; but I do not now recollect before whom said affidavit was made. I do not recollect the precise time,

but it was when said Keziah Taylor came out here from Texas, for the purpose of proving up a pre-emption on some of the public lands in the State of Arkansas.

Question. Please state what was the character of that affidavit that you and George Dooly made, and did you read it before you qualified to it, or was it read to you?

Answer. To the best of my recollection the affidavit of myself only proved that said Keziah was a resident of Fisher's Prairie, Lafayette County, State of Arkansas, at the time the law gave her the right to prove her a pre-emption. I have no recollection of reading said affidavit, nor the same being read to me. All I intended to swear to was that she (said Keziah Taylor) was a resident of the County of Lafayette, Arkansas, at the time the law gave her a right to prove a pre-emption.

Question. Do you know, or did you know at any time, upon what quarter section of the public lands the said Keziah Taylor resided and cultivated, in 1829 and 1830?

Answer. I do not know the numbers of the quarter section that she then lived upon and cultivated; never saw the land, nor traced any of the lines.

Question. State whether you ever intended that your affidavit, made by you, in conjunction with the said George Dooly, should contain an averment that the said Keziah cultivated the N. W. ¼ of section 18, Township 16, of R. 25 west, situate in said County of Lafayette, in 1829, and that she lived thereon on the 29th day of May, 1830?

I never intended to make any such affidavit. I did not know what quarter section, nor do I yet know, only what I have been told. The affidavit I made may have contained such averment, but if so, I did not intend it, nor did I know it.

Question. Who applied to you to make the affidavit aforesaid, and what were you told that you had to swear to?

Answer. The defendant, William F. Morris, who seems to have superintended the matter for said Keziah, is the man who applied to me to make said affidavit; and he told me all he wanted me to prove was, that she was a resident of Fisher's Prairie, Lafayette County, Arkansas, at the time the law gave her the right to prove a pre-emption, and that is all I thought I was swearing to.

JOHN WAGGONER.

Opened and published, by order of Court, this 9th day of May, A. D. 1853.

A. BYRNE,
Clerk.

*Deposition of Alexander P. Bales,*

A witness in behalf of complainant, taken before James B. John-

son, an acting Justice of the Peace for the County of San Augustine, in the State of Texas, on the 22d day of April, A. D. 1850, says:

I am forty-five years of age; I reside in the County of Nacogdoches, in the State of Texas, and have resided there about six years. I am acquainted with the parties to this suit. I have known Mrs. Taylor about twenty-four years; Mr. Morris about seventeen or eighteen years, and Mr. Wynn about fifteen years. I resided in Long Prairie, the State of Arkansas, when I first became acquainted with Mrs. Taylor, and she resided in Fisher's Prairie, in the same State. I resided in Fisher's Prairie when I first became acquainted with Mr. Morris, and he resided near there also. I resided near Fisher's Prairie, Arkansas, when I first became acquainted with Mr. Wynn, and he resided in Fisher's Prairie. Fisher's Prairie is in Lafayette County, Arkansas.

I cannot recollect whether or not Mrs. Taylor was married or single when I first saw her. She had been married three times within my recollection. The name of her first husband was Hemphill, and I cannot recollect when she was married to him. I do not know how long he lived, or whether she had any children by him.

The name of her second husband was Jacobs. I think Thomas Jacobs. I cannot recollect how long he lived, but not very long. I cannot recollect when she was married to Jacobs, or whether she had any children by him. She had two children before she was married to Taylor, but I do not recollect whether she had them by Hemphill or Jacobs. I do not know the names of those children or where they now are.

The name of her third husband was Taylor. I cannot precisely recollect when she was married to Taylor. I do not know whether she had any children by Taylor, or whether or not she is still alive. I do not know where Keziah Taylor now is. The last I heard of her she was residing in Texas. I think Mrs. Taylor left Fisher's Prairie, in Lafayette County, Arkansas, as well as I can recollect, about 22 or 23 years ago, in the winter. When she left, she did so without intending to return. I had frequent conversations with her before she left. Just before she left she made a trade with me to the following effect: I was to gather and take care of her cattle, and to bring them out to her in Texas, in the fall succeeding the winter in which she left. She was to give me one-half of her cattle, for bringing her the other half. She had a small improvement on public land, which she gave to me for collecting, keeping together, and salting her cattle, until I would get ready to bring them out in the fall. Excepting what I have just stated, Mrs. Taylor did not leave any of her property in Fisher's Prairie when she left there, that I know of. The improvement which Mrs. Taylor transferred to me for the consideration above specified was situated at the upper end of Fisher's Prairie, and joined the tract whereon Massach Jeans resided. I took possession of said improvement immediately upon

Mrs. Taylor's leaving it, and resided on the same some 8 or 10 months. After I had resided on it about that length of time, Mr. Taylor, the husband of Mrs. Taylor, came to see me, and wanted me to give up my interest in the improvement of Mrs. Taylor on the public lands and in the cattle to him. I should have stated that I did not take the half of the cattle to Mrs. Taylor in the fall, for the reason that they were levied upon, and detained by the sheriff of Lafayette County, on account of some claim against Mrs. Taylor, which she had left unsettled. I refused to let Mr. Taylor have my interest either in the cattle or the improvement, but we both went together to Mr. Morgan Cryer, who was the brother of Mrs. Taylor. I made a compromise with him, and he gave me fifty dollars for the improvement, and for my interest in the cattle. Mr. Taylor was present at this sale. I do not know what the boundaries of said improvement were after it was surveyed by the United States Government. The last I knew of said improvement it was owned and in cultivation by Col. William Wynn, the plaintiff in this suit. Morgan Cryer, to whom I sold said improvement, took possession thereof very soon after I sold it to him. I do not recollect the precise date; said Cryer sold said improvement to one Andrew Hemphill, said Hemphill sold it to one Samuel P. Carson, who died in possession of said improvement, and the same was afterwards sold by his administrator at public sale, and bought by the plaintiff in this suit. I was present at said administrator's sale. I have already said that Morgan Cryer was the brother of Mrs. Taylor.

I do not know that Mrs. Taylor left any agent, when she left Fisher's Prairie for Texas. She told me that if I needed any assistance about getting up the cattle, I should call on her brother, Morgan Cryer.

I did collect most of Mrs. Taylor's cattle according to the contract between us, and they, after the compromise of which I have before spoken, went into the possession of Morgan Cryer, and I think he sold them to one Jake Buzzard. Before Cryer took them into possession, I think he satisfied the sheriff of Lafayette County as to the levy I before stated was made upon them. Of my own knowledge I do not know that any one has proven up a pre-emption right to the improvement sold by Mrs. Taylor to myself. I have heard that since the sale of the same by myself to Cryer, and since the possession of the same by the present plaintiff, a pre-emption right to the same has been proven up by Mrs. Taylor, or at her instance.

A. P. BALES.

Opened and published by order of court this 9th day of May, A. D. 1853.

A. BYRNE,
Clerk.

*The Deposition of James L. M'Laughlin,*

A witness in behalf of complainant, taken before D. R. Cochran, a Justice of the Peace in the County of Hempstead, and State of Arkansas, on the 13th day of March, A. D. 1852.

Question. Where do you reside, and how long have so resided? state your residence now and heretofore.

Answer. I reside in Clark County, Arkansas, and have lived in the State for about thirty-five years, six or seven years of the time I lived on Red River, in Lafayette County, Arkansas.

Question. Are you acquainted with the parties to this suit? If so, how long have you known them, and where did they reside when you knew them?

Answer. I am acquainted with the parties to this suit. I have known the complainant for eight or ten years. I have known Keziah Taylor for thirty-four or five years. I have known William F. Morris for some twelve or fifteen years. When I first became acquainted with Keziah Taylor, she was the wife of William Hemphill, who afterwards died. I think said Hemphill has been dead about twenty-eight years. She afterwards married one Thomas Jacobs, who died some time in the year 1828, as well as I can recollect.

Where did she reside at the time of the death of her said husband, Jacobs?

Answer. She resided in the upper end of what is called Fisher's Prairie, in Lafayette County, Arkansas.

Question. State how many children she had living at that time.

Answer. She had three, I think.

Question. State where the said Keziah is now, if you know, either married or unmarried; if married, to whom?

Answer. The last I knew and saw of her was on this side of the Sabine River, which was then in the foreign Republic of Mexico. I understand she married shortly after she went to Mexico a man named Taylor. She is still absent from the State of Arkansas, as far as I know of.

Question. When and how did she leave Lafayette County, Arkansas?

Answer. At the time she left Fisher's Prairie I lived in said prairie, within a mile and one-half of her, and I was intimately acquainted with her, and all her affairs. She was desirous of abandoning the United States and take up her residence in Mexico, as she told me. She had in her possession a negro girl, the property of William Hemphill when he died; and the administrators of the said William had been threatening to take possession of said negro girl; and for fear they would do it, she concluded to run away and take the girl with her to what she called the Spanish country, where she could be safe from the administrators. She employed me to assist her out of the country. She was anxious I should do so, as I could assist her

through the woods, as she wanted to elude observation, and to get out of the country without being stopped. We accordingly left Lafayette County late one evening, and travelled through the woods until we struck what is called Trammel's Trail, this side of and near Sulphur Fork, in what is now Texas. She took with her the children and the negro girl, and everything else she had, except a few little articles she gave me. Her stock of hogs she gave to me for going with her, and her cattle she left in the range. I went on with her to the Sabine River, where we parted. She went on in company with a man by the name of Newton, who had fallen in with us a few days before. She went on in his company to where her sister was residing, which, I think, was in what was then called Austin's Colony, where she said she was going to live permanently. I bid her adieu, and returned to Lafayette County, Arkansas, and she went on to her future home.

Question. What became of the cattle she left? and state why she did not sell them before she left.

Answer. I do not know what became of the cattle, but I have understood that one Alexander P. Bales either got them or had something to do with them. The reason that she did not sell them before she left, was that she was afraid of exciting suspicion in the neighborhood, and the negro girl would be taken from her.

Question. What became of the place on which she resided in Fisher's Prairie at the time she left?

Answer. She told me she had sold it to Alexander P. Bales for fifty dollars, and that he had disappointed her so often from time to time, and if I would accept of it I was welcome to it, for she never intended to return, and that it would be of no use to her; that she had abandoned it, and never intended to return to it. I told her I would consult my family when I returned, which I did, but my family being unwilling to remain on Red River, we immediately removed to Clark County, Arkansas, where I have lived ever since.

Question. State what time was it that the said Keziah left Lafayette County for Mexico?

Answer. She left some time in the year 1830, what month I do not recollect. It seems to me that it might be in the spring of that year.

Question. Why do you think it was in the spring of that year that she left?

Answer. As soon as I returned from the Sabine, where I left the said Keziah, I took my family to Clark County, as above stated, and I think my wife made a kind of a garden after I got to Clark, for I was only gone from the State some ten days.

Question. State what was the value of the improvement that she left.

Answer. She told me she had sold it to Bales for fifty dollars, and I should think it was worth that amount.

Question. After your return to Lafayette County, did you still keep it a secret, that the said Keziah had abandoned the United States?

Answer. I did not, but told every one who conversed with me on the subject that she had abandoned her citizenship in the United States, and gone to a foreign republic.

Question. Did it become generally known in Fisher's Prairie that she abandoned the United States?

Answer. I think it was.

Question. Who resided in Fisher's Prairie at the time she left?

Answer. Andrew Hemphill and his mother, and her family; Morgan Cryer, Bryant P. Holmes, Thomas J. McLaughlin, and others.

Question. Who among the above-named persons would have the best recollection of the month and year in which the said Keziah left the United States?

Answer. James Hemphill, who is a brother of Andrew Hemphill, and a brother-in-law of the said Keziah, and who was then one of the family of old Mrs. Hemphill, would be most apt to know at what time she did leave, for he was living in Fisher's Prairie at the time.

Question. Why do you think that James Hemphill would have a better recollection of the time than others?

Answer. I am satisfied that his memory, than mine and the others, and that he took notice of the time she left. Andrew Hemphill ought also to have a correct knowledge of the time she left, from the fact that he was the administrator of Wm. Hemphill, and was interested in keeping the negro in the County, and besides he was the second man I saw after I got back to Fisher's Prairie, and he threatened me for *for* going with her off.

Question. Was she indebted to the estate of William Hemphill, or to other persons, if so, what arrangements did she make for the payment thereof?

Answer. She gave me a power of attorney a few days before she left, to transact her business with the administrators of said William Hemphill, and to close up all her matters in the country upon a settlement with the administrators. The estate was found to be in debt to her about ninety dollars, which I collected from them and paid over to a Mr. Taylor, a year or so afterwards. He stated that he was her husband, which I accordingly settled with him, and further deponent saith not.

JAMES L. McLAUGHLIN.

Opened and published by order of Court, this 9th day of May, A. D. 1853.

A. BYRNE,
Clerk.

*Deposition of Morgan Cryer,*

A witness in behalf of defendant, taken before James Trigg, Judge

of the County and Probate Courts in and for the County of Lafayette, and State of Arkansas, on the 7th day of February, A. D. 1849.

How long have you lived in the County of Lafayette, in the State of Arkansas?

If in said County, in what part?

Are you acquainted in about Fisher's Prairie, in said County of Lafayette?

Are you acquainted with the defendant, Keziah Taylor?

If so, how long have you been acquainted with her?

Did she ever reside in Fisher's Prairie, in said County?

If so, what was her name when she resided there, and in what part of said Prairie did she reside.

Are you acquainted with the surveys of the public lands in and about Fisher's Prairie?

If so, have you examined the lines and corners in and about Fisher's Prairie?

State on what quarter section the said defendant, Keziah Taylor, resided in the year of 1829 and '30, if you can, from your knowledge?

At what time did the said Keziah Taylor remove from Arkansas?

Answers to the foregoing interrogatories:

First. I removed here in the year 1819, and have lived in the County ever since.

Second. I resided in Fisher's Prairie a part of the time, and I removed to my farm below Fisher's Prairie on the River, and then I removed to my present residence, near Lewisville.

Third. I am.

Fourth. I am.

Sixth. I have been acquainted with her as long as I can recollect. She is my sister.

Seventh. She did reside in Fisher's Prairie; when she first removed there she was the wife of William Hemphill, and also when she resided there she was the wife of Thomas Jacobs, and she resided on the north part of the prairie.

I am, in part; I have examined some of the surveys.

I have examined some of the lines and corners in and about Fisher's Prairie.

I don't recollect exactly the quarter section she resided on in the year 1829 and '30.

I think she removed from Arkansas in the month of October and November, or about the 1st of December, 1830.

Interrogatory. Do you know whether the defendant, Keziah Taylor, cultivated any portion of the N. W. $\frac{1}{4}$ of section 18, in T. 16, south of Range 25 W., in the year 1829, and was in the possession thereof the 29th May, 1830?

To which question the said complainant by his solicitor, excepted,

and which exception being overruled, by consent the benefit of said exception is reserved for the decision of the Chancellor

I know, as far as I am able to ascertain from an examination of the lines, that defendant, Keziah Taylor, cultivated a portion of said quarter section in 1829 and '30. It has been some time since I examined. I believe, as well as I can recollect, that the cultivation of said Keziah Taylor was upon the N. W. ¼ section 18, T. 16 S., of R. 25 west. In 1829 she was absent a part of the time; went and stayed with her sister in Clark County, several months; she came back again in the fall and gathered a crop, leaving a negro girl with the man she had employed to raise a crop.

Can you state whether the said Keziah Taylor was in possession of that portion of the N. W. ¼ of section 18, in T. 16 S., of R. 25 west, which she cultivated in 1829, on the 29th day of May, 1830.

To this question the said complainant by his solicitor, excepted, the said exception being overruled, by consent the benefit of said exception is reserved for the decision of the Chancellor.

She was in possession of that portion of said quarter section, which she cultivated in 1829, on the said 29th day of May, 1830.

Did she live on the same quarter section on which the cultivation last aforesaid was made, to wit: the northwest quarter of section 18, either in the years '29 or '30?

I do not believe it was on the same quarter section she cultivated?

How long have you been acquainted with George Dooly, deceased.

I have known him some twenty years.

Was he frequently in and about Fisher's Prairie when you knew him?

I know he was frequently passing in and through the said Fisher's Prairie.

At what time did you first know George Dooly about Fisher's Prairie?

I cannot state precisely, but I think it was before the years 1829 and 1830.

What was the character of the said George Dooly when under oath as to truth and veracity?

I don't think it was ever doubted, as to truth.

What was said of Dooly's general character, among his neighbors and acquaintances?

He stood very fair, as far as I know.

Have you been well acquainted with him?

Yes; he has been frequently about my house.

Cross-Examination.

You state in your original examination you have in part examined the surveys in Fisher's Prairie, will you please state fully how you examined them, when did you examine them, and what was your

means of knowing the different subdivisions of the sections and surveys in that Prairie? Did you ever trace the lines of the said quarter section, hereinbefore referred to, with a compass or any other means of survey, that could give you a well-defined and certain knowledge of its boundaries?

When I examined them, I followed the lines through the timber, and when I came to the Prairie I had no means of survey. I have examined them at various times; more than once. All the means I had of knowing was by a stake stuck down in the prairie, supposed to be a section corner. I had no means of knowing the subdivisions. I never did trace the lines of the said quarter section hereinbefore referred to with a compass, and I never made any survey of it.

When did Thomas Jacobs die?

It appears to me it was in 1828.

When the defendant, Keziah Taylor, left the State of Arkansas, where did she remove to, and how long has she been absent from this State, and where has been her permanent home since her removal?

The defendant, Keziah Taylor, left the State of Arkansas in 1830, some time in October and November, as has heretofore been stated. Upon her removal from Arkansas she went to Texas. She never came back to this State to live, but has come back several times on business, and I supposed her permanent residence, since her removal, has been in Texas.

You say in your original examination, that said Keziah Taylor is your sister. Will you please state if she has ever resided in the State of Arkansas since her removal to Texas, as heretofore stated, or has she ever been domiciled here since that time?

She never has resided in the State of Arkansas since her removal as I know of, and has had no house or home in this State as I know of.

Please state after the removal of Keziah Taylor as aforesaid, who occupied or cultivated the said N. W. ¼ of section eighteen in T. 16 S., R. 25 West.

This question was objected to by defendant. There were several persons who cultivated it. Andrew Hemphill cultivated it, and Joseph Jones after him, Samuel P. Carson, and William Wynn, the complainant. After Keziah Taylor left, I purchased the possession of Alexander P. Bales. He, Bales, was left in possession of said Keziah Taylor's stock, and the improvement upon the N. W. ¼ aforesaid. And he, Bales, said he had been put to some trouble about the stock, and if deponent would give him $50, he would give deponent possession of the place. Under this arrangement I took possession of the place. Sold the possession of the improvement to Andrew Hemphill. Andrew Hemphill let Samuel P. Carson have it. I think it was in 1832. I purchased the possession of Alexander P.

Bales as aforesaid, and I think it was in the fall of 1833 I sold to Hemphill. When Hemphill sold to Carson I am unable to state.

From the time Keziah Taylor left this State down to the present time, she has not resided on, nor had actual possession of the said improvement. But from the time I purchased said possession of Bales, I had possession under that purchase. Andrew Hemphill, after his purchase from me as aforesaid, had possession. Carson made his purchase from Hemphill, had possession. After the death of Carson, possession thereof was in Joseph Jones, and subsequently in William Wynn, complainant. Ever since deponent sold the possession, aforesaid, to said Hemphill, the said improvement has been in the possession either of said Hemphill, or of subsequent purchasers under him, and by them cultivated, except after the death of Carson the improvement aforesaid passed, as I have been informed, to his executor, Robert Hamilton, and I cannot say positively as to its cultivation by Hamilton.

Re-Examined.

Was the supposed section corner by you spoken of seen in the prairie, marked by the surveyor's marks, as to any particular section? If so, what section did it indicate?

It had on it marks like surveyor's marks, and indicated sec. 18, in S. 16, of R. 55 west.

Can you state whether that supposed section corner you saw in the prairie was at any one corner of sec. 18, T. 16 S., of R. 25 W.? If so, at what corner of said section?

It stood at the southeast corner of said section.

Have you ever traced the line running from the northeast corner of section 18, to the northwest corner of section 18, T. 16, range 25 west?

I do not recollect ever to have traced said line.

Would the improvement made by said Keziah Taylor, lie north or south of a line running due west from the northeast corner of section 18, T. 16, R. 25 west?

It would lie south of such line.

On which side of a line running due north from the southwest corner of section 18, would the improvement made by Keziah Taylor lie?

If I understand the question right, the improvement would lie east of that line. I have examined that line. And further this deponent saith not.

MORGAN CRYER.

Opened and filed this 11th day of February, A. D. 1852, upon the application of Thomas Hubbard, solicitor for said defendants.

A. BYRNE,
Clerk.

*The Depositions of Lewis B. Fort,*

A witness in behalf of defendants, taken before Alexander Byrne, Master in Chancery in and for the County of Lafayette and State of Arkansas, on the 13th day of September, A. D. 1851.

Interrogatory First. Are you acquainted with the parties to this suit, and if so, were depositions taken before you in regard to the pre-emption right of said Keziah Taylor to the N. W. ¼ of section 18, in T. 16 S., of R. 25 west, situated in Fisher's Prairie, in Lafayette County, or any other land claimed by the said Keziah, and if so, was any agreement made between the said William F. Morris and William Wynn, that the adjudication of the land officers upon the depositions and testimony then to be taken, and such as should thereafter be taken, should be final between the parties in regard to the pre-emption right of the said Keziah, and that there should be no further litigation between the parties in regard to said pre-emption right?

Answer. I am acquainted with William Wynn and William F. Morris, and have seen Keziah Taylor. There was depositions taken before me, in regard to the said pre-emption right of the said Keziah, and I was a Justice of the Peace at the time. I heard the defendant William F. Morris say there was an agreement between them, that the adjudication of the land officers in regard to the pre-emption right of the said Keziah should be final, but don't think I ever heard Wynn say so. I don't recollect when I heard Morris make this statement. It probably may have been at the time of taking the depositions, or it may have been before or since. I cannot recollect whether or not Col. William Wynn was present at the time the depositions was taken. I don't recollect whether or not I ever heard William F. Morris make this declaration in the presence of William Wynn, the complainant herein. And further this deponent saith not.

LEWIS B. FORT.

*The Depositions of James Abrahams.*

A witness for defendants, taken before Alexander Byrne, Master in Chancery, on the 23d day of September, A. D. 1851.

Interrogatory First. Was your deposition taken before Lewis B. Fort, a Justice of the Peace, in regard to the pre-emption right of Keziah Taylor to the N. W. ¼ of section 18, T. 16 S., of R. 25 west, or any other land claimed by the said Keziah, situate in Fisher's Prairie, Lafayette County. If so, was William Wynn, the complainant, William F. Morris, the defendant herein, present when your deposition was so taken, and did you hear any agreement made between the said William Wynn and William F. Morris, in regard to the testimony there taken, or thereafter to be taken, in regard to

the pre-emption of the said Keziah? If so, state what that agreement was, and what was said by the said William Wynn and William F. Morris, or either of them, in the presence of the other, and whether the adjudication of the land officers upon such testimony should be final, and whether or not there should be any more litigation in regard to said pre-emption right?

Answer. I recollect being present when depositions were taken in regard to the pre-emption right of the said Keziah Taylor, but do not recollect whether or not my own was taken, nor do I recollect whether the same were taken before Lewis B. Fort or not. The complainant, William Wynn, and William F. Morris, the defendant, were both present at the time, I think. I do not recollect of hearing any agreement made between the said William Wynn and William F. Morris; there may have been, but I do not recollect it.

Interrogatory Second. Have you at any other time heard the said William Wynn and William F. Morris, or either of them, say anything in regard to any agreement made between them in regard to the pre-emption right of the said Keziah Taylor, as to the adjudication of the land officers thereupon, and whether the adjudication should be final and the litigation between the parties cease upon the testimony taken?

Answer. I have no distinct recolleetion, but think it probable they both have spoken of such agreement in my presence.

Interrogatory Third. Have you heard the complainant Wynn say to the defendant Morris, at any time, that he would not stand to the agreement made between them about the pre-emption right of the said Keziah Taylor, and that he would litigate it further?

Answer. I do not recollect that I have.

Cross-examination by Complainant.

Interrogatory First. Did you ever hear said Morris speak of the agreement referred to, in the presence of said Wynn?

Answer. I do not recollect that I ever did.

Interrogatory Second. Do you recollect to have heard either party say whether said agreement was in writing, and whether they had regularly entered into bond and referred the matters in controversy in regard to the pre-emption aforesaid to arbitrators?

Answer. I do not.

Interrogatory Third. Do you recollect to have heard the said complainant at any time say what the agreement above spoken of was, and whether it was made upon conditions or not?

Answer. I do not; I may have heard him speak of an agreement, and may not—I do not recollect. And this deponent further sayeth not.

JAMES ABRAHAMS.

*The Depositions of Thomas M. Cryer,*

A witness in behalf of defendants, taken before A. Byrne, Master in Chancery, &c., on the 13th day of September, A. D. 1851.

First Interrogatory. Were you ever at the N. E. corner of the N. W. ¼ of Sect. 18, in T. 16 south, of R. 25 West; if so, when and who were with you?

Answer. I don't know that I ever were; I do not know anything about the lines.

Second Interrogatory. Did you ever go to a section or quarter section corner, N. E. of Col. William Wynn's present residence, and N. W. of Col. Josiah Garland's negro quarters, in Fisher's Prairie, and if so, who were with you?

Answer. I went out in that direction, and stopped, and some one said, here is a corner. Wm. F. Morris, the defendant herein, George Dooly (now dead), Mildred Cryer, and the defendant Keziah Taylor were in company with me, and I with William F. Morris remarked, here is a corner; I am not certain, but think it was him; I don't recollect whether any one got down and examined it or not.

Third Interrogatory. Did you know George Dooly in his lifetime? If so, what was his character for truth and veracity?

Answer. I was acquainted with him ever since I could recollect, and never heard anything against him.

Fourth Interrogatory. Can you recollect when it was that you were at the corner aforesaid?

Answer. I think it was some time in the fall of 1842.

Cross-examination by Complainant.

First Interrogatory. Did you hear any person say what corner, the corner aforesaid, was?

Answer. I don't recollect that I heard any person say what corner it was.

Second Interrogatory. When you were at the section corner east of Col. Wynn's residence, and N. W. of Col. Garland's negro quarters, did you then know what section or quarter section you were on? If so, state what it was, and how you obtained your information.

Answer. I did not know what section, or quarter section I was on. I did not examine the corners.

Third Interrogatory. State at whose instance and request you and those in company with you went to the corner above spoken of?

Answer. I don't recollect that any person asked me to go. I only recollect of being along. And further this deponent sayeth not.

THOMAS CRYER.

By consent James Abrahams was recalled, and says he was acquainted with George Dooly, deceased, in his lifetime, and be-

lieves he was considered a man of truth and veracity in his neighborhood.

JAMES ABRAHAMS.

*Depositions of Mildred Cryer,*

A witness on behalf of defendants, taken before Alexander Byrne, Master in Chancery, &c., on the 13th September, A. D. 1852.

Interrogatory First. Were you ever at the half-mile corner between the N. E. and N. W. quarter of Sec. 17 and 18 in township 16 S., of R. 25 West? If so, state when and who were in company with.

Answer. I was at the corner between Col. Wynn's and Col. Garland's, as they now stand, as near as I recollect in the fall or first part of the winter of the year 1842; Keziah Taylor, the defendant herein, and George Dooly were in company with me.

Interrogatory Second. Did any one examine the corner? If so, what corner did they say it was?

Answer. George Dooly and W. F. Morris examined the corner. I do not recollect what corner they said it was.

Interrogatory Third. How long have you known George Dooly, deceased.

Answer. I have known him for 18 years. His character for truth and veracity in his neighborhood was good so far as I know. I never heard any one speak against his character for truth and veracity.

Interrogatory Fourth. Did you know Keziah Taylor, the defendant? If so, where did she reside in 1829, and when did she remove to Texas?

Answer. I know Keziah Taylor. I don't recollect where she resided in 1829, nor when she moved to Texas.

Cross-examination by Complainant.

Interrogatory First. How did you know the corner above spoken of in your deposition to be the corner between Wynn and Garland?

Answer. I heard William F. Morris, and George Dooly (deceased), say so.

Interrogatory Second. Do you know where Keziah Taylor resided in 1842, and whether or not that was the first visit she made to the United States from the time she removed from them?

Answer. She lived in Texas in 1842, and that was her first visit to the United States from the time she left.

Re-examination in chief, by Defendants.

Interrogatory First. From the time you first knew Keziah Taylor until she removed to Texas, did she not reside in Fisher's Prairie?

Answer. She did, with exception of one summer, which she spent up in Clark County, and further than this deponent saith not.

MILDRED CRYER.

Opened and filed this 11th day of February, A. D. 1852, at the request of Thomas Hubbard, solicitor for defendants.

A. BYRNE,
Clerk.

The affidavit and motion for appeal filed by said William Wynn, appear in the words and figures following, to wit: In Lafayette Circuit Court, at May Term, A. D. 1853.

WILLIAM WYNN, Complainant,
*v.*
WM. F. MORRIS, KEZIAH TAYLOR, Defendants.

I, William Wynn, complainant in the above-entitled case, do solemnly swear that the appeal which I pray in this case to the Supreme Court, is not made for vexation or delay, but because I do verily believe that I am aggrieved by the decision and decree of this Circuit Court of the County of Lafayette therein, so help me God.

WILLIAM WYNN.

Sworn to and subscribed in open court, this 14th day of May, A. D. 1853.

A. BYRNE,
Clerk.

And the said William Wynn comes and presents the foregoing affidavit, and prays an appeal from the decision and decree of this Court in the above-entitled case to the Supreme Court of the State of Arkansas.

WILLIAM WYNN.

ALBERT PIKE,
Counsel for William Wynn.

Filed May 14th, 1853.

A. BYRNE,
Clerk.

State of Arkansas, County of Lafayette, *ss.*

I, Alexander Byrne, Clerk of the Circuit Court within and for the County of Lafayette aforesaid, do hereby certify that the foregoing transcript, containing one hundred and sixty-two pages (162), is a true transcript of all the papers, record, and proceedings, had in the cause of William Wynn against William F. Morris and Keziah Taylor.

[SEAL.] In testimony whereof, I have hereunto set my hand as such clerk, and affixed the seal of the said Court, this 24th day of June, A. D. 1853.

A. BYRNE,
Clerk.

And afterwards, to wit, at a Supreme Court of said State, begun and held at the court-house, in the City of Little Rock, on the first Monday, being the 4th day of July, A. D. 1853, on the fifth day were the following proceedings, to wit:

At this day comes the said appellant by his solicitor, and on motion it is ordered that his assignment of errors be filed, and thereupon the same is filed.

And afterwards, to wit: on Monday the 11th day of July of said term, were the following proceedings: At this day comes the said appellee, William F. Morris, by his solicitor, and on motion it is ordered that his joinder in error be filed, and thereupon the same is filed.

[Note. The assignment of errors and joinder have been lost—supposed to have been while in hands of judgment attorneys.—L. E. Barlu, Clerk.]

Afterwards, to wit: on Tuesday, July 12th, of said term, were the following proceedings, to wit:

At this day come the said appellant, and the said appellee, William F. Morris, by their solicitors, and said appellee, Keziah Taylor, being called to appear and defend, comes not, but makes default, it is therefore ordered that this cause progress, and be heard on the part of said appellant, and said appellee, William F. Morris; and this cause is by said appellant and appellee submitted and by the Court taken under advisement.

Afterwards, to wit: at a Supreme Court of said State begun and held at the court-house in the City of Little Rock, on the first Monday in January, A. D. 1854, to which term this cause was continued by operation of law, on the 26th day of April, of said term, were the following proceedings, to wit:

At this day came James W. Curran, Esq., solicitor for the appellees, and on motion files his suggestion that the said William F. Morris, since the submission of this cause, hath departed this life, and submits whether this Court will proceed further until the appeal is revived against the representatives of the deceased.

[Note. This suggestion also lost.—L. E. Barlu, Clerk.]

And afterwards, to wit: at said term of our Supreme Court, begun and held on the first Monday in July, A. D. 1855, to which term this cause was continued by operation of law; on the 25th day of July were the following proceedings, to wit:

At this day came said appellant and surviving appellee, by their solicitors, and on motion file their written agreement that Chesley B. Morris and Martha Morris are the children and only heirs-at-

law of William F. Morris, deceased, and may be substituted as appellees herein, in lieu of said William F. Morris, deceased; whereupon they enter their appearance herein as appellees by their solicitors, which said agreement is in the following words: Arkansas, to wit: In the Supreme Court, at July Term, A. D. 1855. We agree that Chesley B. Morris and Martha Morris may be substituted as appellees upon the record in the case of William Wynn *v.* William F. Morris, now pending in this Court, in lieu of the said William F. Morris, deceased, of whom they are the children and only heirs-at-law. Watkins and Gallagher for appellees. Albert Pike for the appellant.

And afterwards, to wit, on said 4th day of August, A. D. 1855, were the following proceedings, to wit:

This cause came on to be heard upon the transcript of the record of the Circuit Court of Lafayette County, in Chancery, and the death of the said William F. Morris, since the appeal in this case, being suggested, the said Chesley B. Morris and Martha Morris appeared herein as his heirs-at-law, and this cause being argued by counsel and understood by the Court, it is the opinion of this Court that there is no error in the proceedings and decree of said Circuit Court in Chancery in this case.

It is therefore ordered and decreed by the Court that the decree of said Circuit Court in Chancery in this cause be, and the same is hereby in all things affirmed with costs. It is further ordered and decreed that said appellant pay to said appellees all their costs herein incurred, and that they have execution thereof as upon judgments at law.

And afterwards, to wit, on the 13th day of August, A. D. 1855, the said appellant presented to the Clerk of said Supreme Court a writ of error issued out of the office of the Clerk of the Circuit Court of the United States for the Eastern District of Arkansas, to remove the record and proceedings in this cause to the Supreme Court of the United States; and at the same time filed in the office of the said Clerk of said Supreme Court a copy of said writ of errors for said appellees, which is in the following words:

United States of America, *sct.*

The President of the United States of America to the Judges of the Supreme Court of the State of Arkansas, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a suit upon appeal from a decree of the Lafayette Circuit Court in Chancery, which is in the said Supreme Court of the State of Arkansas, before you, between William Wynn, appellant, and Chesley B. Morris, Martha Morris, and Keziah Taylor, appellees, a manifest error hath happened, to the great damage of the said William Wynn, as by his complaint appears, and the construction of a statute of the United States having been on that appeal drawn in

question, and for having decided against the title, right and exception specially claimed by said William Wynn, under such statute, and immediately affecting the construction thereof; and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid, in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first day of the next term of that Court, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done. Witness the Honorable Roger B. Taney, Chief Justice of the said Supreme Court of the United States, this 13th day of August, in the year of our Lord one thousand eight hundred and fifty-five, and of the Independence of the United States the eightieth year.

[L. S.]

Attest:

WILLIAM FIELD,
Clerk of the Circuit Court of the United States,
Eastern District of Arkansas.

And afterwards, to wit, on the 17th day of August, in our said Supreme Court of the State of Arkansas, were the following proceedings:

On motion of the appellant, by his solicitor, it is ordered that he enter into a bond, in the penalty of ten thousand dollars, to stay proceedings under the decree of said Circuit Court in Chancery, affirmed by this Court, until the adjudication of this cause in the Supreme Court of the United States, on writ of error; that *that* the time for entering into such bond be extended to the first day of November next, and that the same may be approved by the Hon. E. H. English, Chief Justice of this Court.

And afterwards, to wit, on the first day of November, A. D. 1855, the said appellant filed in the office of the Clerk of said Supreme Court said bond, which is in the following words: Know all men by these presents, that we, William Wynn, as principal, and Abner B. Fowlkes and Joshua L. Howard, as his sureties, are held and firmly bound unto Chesley B. Morris, Martha Morris, and Keziah Taylor, in the sum of ten thousand dollars, lawful money of the United States; to the payment whereof, well and truly to be made to them, their executors, administrators, or assigns, we bind ourselves, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this 28th day of August, A. D. 1855. But upon the following condition: that whereas, the above-named William Wynn hath prosecuted a writ of error to the Supreme Court of the United States, to reverse

the judgment rendered in the above-entitled suit by the Supreme Court of the State of Arkansas, now, therefore, if the said William Wynn shall prosecute his said writ of error to effect, and answer all damages and costs, if he shall fail to make good his plea, then this obligation shall be void; but otherwise, the same shall be and remain in full force and virtue.

WILLIAM WYNN, [SEAL.]
ABNER D. FOWLKES, [SEAL.]
JOSHUA L. HOWARD. [SEAL.]

Sealed and signed in presence of
B. B. JONES,
ROBT. P. CROWELL.

Upon which said bond is the following indorsement:

November 1st, 1855. I, Elbert H. English, Chief Justice of the Supreme Court of the State of Arkansas, hereby approve of the within bond, and the securities therein as sufficient.

In testimony that the foregoing one hundred and seventy-three pages contain a full, true, and complete transcript of the record of said Supreme Court, in the case therein mentioned, except the opinion of the Court and the briefs of counsel, I, Luke E. Barlu, Clerk of said Supreme Court, have hereunto set my hand and affixed the seal of said Court, at my office, in the City of Little Rock, this 26th day of November, A. D. 1855. [SEAL.]

L. E. BARLU,
Clerk.

United States of America, *set.*

The President of the United States of America, to the Judges of the Supreme Court of the State of Arkansas, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a suit upon appeal from a decree of the Lafayette Circuit Court in Chancery, which is in the said Supreme Court of the State of Arkansas, before you, between William Wynn, appellant, and Chesley B. Morris, Martha Morris, and Keziah Taylor, appellees, a manifest error hath happened, to the great damage of the said William Wynn, as by his complaint appears; and the construction of a statute of the United States, having been on that appeal drawn in question, and you having decided against the title, right and execution specially claimed by said William Wynn under such statute, and immediately affecting the construction thereof; and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in his behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that

you have the same at Washington on the first day of the next term of that Court, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, which of right, and according to the law and custom of the United States should be done.

Witness the Honorable Roger B. Taney, Chief Justice of the said Supreme Court of the United States, this 13th [SEAL.] day of August, in the year of our Lord one thousand eight hundred and fifty-five, and of the Independence of the United States the eightieth year.

Attest, WM. FIELD,
Clerk of the Circuit Court of the United States,
Eastern District of Arkansas.

I, E. H. English, Chief Justice of the Supreme Court of Arkansas, do allow the within writ of error; this 13th day of August, 1855.

E. H. ENGLISH,
Chief Justice.

State of Arkansas, in the Supreme Court.

In obedience to the mandate of the within writ, and the allowance thereof by the Chief Justice of said Supreme Court, I have made out and certified a full, true and complete transcript of the record in said cause (except as in the certificate thereof), which is herewith returned to said Supreme Court of the United States.

In testimony whereof I have hereunto set may hand and [SEAL.] affixed the seal of said Supreme Court, at my office, this 26th day of November, A. D. 1855.

L. E. BARLU,
Clerk.

In the Supreme Court of the United States. December Term, A. D. 1855.

In error to the Supreme Court of Arkansas.

WILLIAM WYNN, Plaintiff in Error,
*v.*
WESLEY B. MORRIS, MARTHA MORRIS, and KEZIAH TAYLOR, Defendants in Error.

And the said plaintiff in error comes and says, That in the record and proceedings aforesaid, and in the rendering of the judgment and decree of affirmance aforesaid, by the said Honorable the Supreme Court of the State of Arkansas, manifest error hath intervened:

1st. In this, to wit: That the said Supreme Court did by said

judgment and decree affirm the said decree of said Circuit Court of Lafayette County in Chancery.

2d. In this, to wit: That the construction of the Act of the Congress of the United States, approved the 29th day of May, A. D. 1830, entitled "An Act to grant pre-emption rights to settlers on the public lands," being drawn in question in the said suit on appeal in said Supreme Court of the State of Arkansas, and the said William Wynn therein specially claiming that the land and premises therein in controversy were not subject to the pre-emption right of the said Keziah Taylor thereto, under said act of Congress, but were excepted out of the operation of said act, upon a proper construction thereof, because after the said pre-emption accrued, to wit, in the same year 1830, she abandoned said land, and removed therefrom to a foreign country, and there had ever since remained and became a citizen thereof, leaving said land unoccupied; the said Supreme Court of Arkansas did, by the judgment and decree aforesaid, decide that said land was not excepted out of the operation of said Act of Congress, but remained liable to and bound by said pre-emption right, as against the possession and damage from the said plaintiff in error: and the construction of said act is immediately affected thereby.

3d. And in this, to wit: That the construction of the Act of Congress, approved the 29th day of May, A. D. 1830, entitled "An Act to grant pre-emption rights to settlers on the public lands," and also of the other Act of Congress, approved the 4th day of September, A. D. 1841, entitled "An Act to appropriate the proceeds of the sales of the public lands, and to grant pre-emption rights," being drawn in question in the said suit in said Supreme Court of Arkansas on appeal: and it being therein specially claimed by the said William Wynn, that upon a proper construction of said two Acts, and upon the facts as established, the land in controversy of said suit was not subject to pre-emption in favor of said Keziah Taylor, under said Act of 29th of May, 1830, but remained on the 16th of May, A. D. 1842, public and unappropriated land of the United, excepted out of the operation of said last-mentioned act; and that upon a proper construction of said two Acts, he had obtained right and title to said land; the said Supreme Court of Arkansas did decide against said right, title, and exception so specially claimed by said William Wynn, under said statutes, by the said judgment and decree, and the construction thereof is immediately affected thereby.

Wherefore, and for other errors in the said record, proceedings, and judgment manifest, the said plaintiff in error prays that the judgment aforesaid, in form aforesaid given, may be reversed, annulled, and wholly held for nought; and that he may be restored to all things which he hath lost by occasion thereof.

ALBERT PIKE,
Counsel for Plaintiff in Error.

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United States of America, *sct.*

To Chesley B. Morris, Martha Morris, and Keziah Taylor, greeting:

You are hereby cited and admonished to be and appear in a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to a writ of error, filed in the office of the Clerk of the Supreme Court of Arkansas, wherein William Wynn is plaintiff, and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Hon. Roger B. Taney, Chief Justice of the said Supreme Court of the United States, this 13th day of August, in the year of our Lord one thousand eight hundred and fifty-five, and of the Independence of the United States the eightieth year.

E. H. ENGLISH,
Chief Justice Supreme Court, Arkansas.

We acknowledge due service of this citation.

WATKINS & GALLAGHER,
Solicitors for Morris's Heirs.

LITTLE ROCK, August 16th, 1855.